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TREASURE ISLAND DEVELOPMENT AUTHORITY  
ONE AVENUE OF THE PALMS,  
BLDG. ONE, 2<sup>ND</sup> FLOOR, TREASURE ISLAND  
SAN FRANCISCO, CA 94130  
(415) 274-0660 FAX (415) 274-0299  
WWW.SFTREASUREISLAND.ORG

**TREASURE ISLAND DEVELOPMENT AUTHORITY  
SPECIAL MEETING AGENDA**

February 23, 2011 – 1:30 P.M.

Room 400, City Hall  
1 Dr. Carlton B. Goodlett Place

**DIRECTORS**

Claudine Cheng, <i>President</i>	Larry Del Carlo
Mark Dunlop	John Elberling, <i>CFO</i>
Larry Mazzola, Jr.	Linda Richardson
Jean-Paul Samaha, <i>Secretary/VP</i>	Supervisor Jane Kim, <i>Ex-Officio</i>

Mirian Saez, Director of Island Operations  
Peter Summerville, Commission Secretary

GOVERNMENT  
DOCUMENTS DEPT

FEB 18 2011

**ORDER OF BUSINESS**

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1. Call to Order and Roll Call
2. General Public Comment (*Discussion Item*) *This item is to allow members of the public to address the Treasure Island Development Authority Board ("Authority Board") on matters that are within the subject matter jurisdiction of the Authority Board and that do not appear on the agenda. In addition to General Public Comment, Public Comment will be held during each item on the agenda. \*\*\*  
Estimated Length of Item: 10 minutes*
3. Reports
  - a. Report by Director of Island Operations (*Discussion Item*)  
*This item is to allow the Director of Island Operations to report on staff activities, on-Island events and to make announcements.  
Estimated Length of Item: 5 minutes*

- b. Report by Office of Economic & Workforce Development (*Discussion Item*)  
*This item is to allow the Office of Economic & Workforce Development to report on activities related to the transfer and redevelopment of former Naval Station Treasure Island.*

*Estimated Length of Item: 10 minutes*

- c. Report by the Treasure Island/Yerba Buena Island Citizen's Advisory Board (*Discussion Item*)

*This item is to allow the Treasure Island/Yerba Buena Island Citizen Advisory Board to report on activity at recent meetings of the Citizen Advisory Board.*

*Estimated Length of Item: 10 Minutes*

4. Communications (*Discussion Item*)  
*Estimated Length of Item: 5 minutes*

5. Ongoing Business by Board of Directors (*Discussion Item*)  
*Estimated Length of Item: 5 Minutes*

6. **CONSENT AGENDA**  
*Estimated Length of Item: 5 minutes*

*All matters listed hereunder constitute a Consent Agenda, are considered to be routine by the Authority Board and will be acted upon by a single vote of the Authority Board. There will be no separate discussion of these items unless a member of the Authority Board so requests, in which event the matter shall be removed from the Consent Agenda and considered as a separate item.*

- a. Resolution Approving and Authorizing (i) the Execution of a First Amendment to the Memorandum of Understanding with the San Francisco Public Utilities Commission for Adjustment of Utility Rates, and (ii) the Adjustment of Utility Rates to Establish an Interruptible Water Rate for Public Uses Retroactive to July 1, 2010 (*Action Item*)

7. Treasure Island/Yerba Buena Island Redevelopment Project Entitlements and Transaction Documents Presentation, including: (i) Draft Parks and Open Space Plan; (ii) Draft Finance Plan; and (iii) Draft Economic Development Conveyance Memorandum of Agreement for the Conveyance of Naval Station Treasure Island. (*Discussion Item*)  
*Estimated Length of Item: 45 minutes*

8. Resolutions Conditionally Approving and Adopting Rules Governing Participation by Property Owners and the Extension of Reasonable Preferences to Business Occupants in the Treasure Island/Yerba Buena Island Redevelopment Project (*Action Item*) *Estimated Length of Item: 15 minutes*

9. Resolution Conditionally Adopting California Department of Housing and Community Development Title 25 Relocation Assistance and Real Property Acquisition Guidelines, With Certain Modifications (*Action Item*) *Estimated Length of Item: 15 minutes*
10. Discussion of Future Agenda Items by Directors (*Discussion Item*)  
*Estimated Length of Item: 5 Minutes*
11. POSSIBLE CLOSED SESSION  
**\*\*\*If approved by the Authority Board, this closed session item will take place for approximately 30 minutes at the end of the meeting\*\*\***
- a. Public comment on all items relating to closed session
  - b. Vote on whether to hold closed session to confer with real property negotiators (*Action item*)
- 1). CONFERENCE WITH REAL PROPERTY NEGOTIATORS  
*Persons negotiating for the Authority:* Rich Hillis, Michael Tymoff, Jon Yolles  
*Persons negotiating with the Authority:* United States Navy, Treasure Island Community Development LLC,  
*Property:* Former Naval Station Treasure Island  
*Under Negotiation:*  
Price: \_\_\_\_\_ Terms of payment: \_\_\_\_\_ Both: X
- c. Reconvene in open session (*Action item*)
    - i. Possible report on action taken in closed session under Agenda Item 11 (Government Code section 54957.1(a)(1) and San Francisco Administrative Code Section 67.12)
    - ii. Vote to elect whether to disclose any or all discussions held in closed session (*San Francisco Administrative Code Section 67.12*).
12. Adjourn

*Relevant documents such as resolutions, staff summaries, leases, subleases are available at the Treasure Island Development Authority Office, One Avenue of the Palms, Second Floor, Treasure Island, and the Government Information Center at the Main Library, 100 Larkin Street. Public comment is taken on each item on the agenda.*

*If any materials related to an item on this agenda have been distributed to the TIDA Board of Directors after distribution of the agenda packet, those materials are available for public inspection at Treasure Island Development Authority, Building One, 2<sup>nd</sup> Floor, One Ave. of Palms, San Francisco, CA 941130 during normal office hours.*

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### **KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE**

(Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact: Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at [sotf@sfgov.org](mailto:sotf@sfgov.org).

Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from the SOTF or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org>

















**Treasure Island /Yerba Buena Island  
Citizens Advisory Board  
Meeting Agenda**

**Tuesday, February 15, 2011  
6:00-8:00 PM**

**San Francisco City Hall, Room 305  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102**

For further information about the meeting please contact Janell Wegman at (415) 554-6680

- I. Roll Call
- II. Approval of January 11, January 18, and February 1, 2011 CAB Minutes (Action Item)
- III. TIDA Staff Updates (15 min) (Information Item):
  - a) Treasure Island Development Authority Board
  - b) Legislative
  - c) Development Schedule
  - d) Bay Bridge
  - e) Job Corps
  - f) Island Clean-Up
- IV. Treasure Island/Yerba Buena Island Redevelopment Project Entitlements and Transaction Documents Presentation, including (60 minutes) (Informational presentation only):
  - a) Financing Plan
  - b) Parks & Open Space Plan
  - c) Navy Conveyance
- V. Treasure Island/Yerba Buena Island Redevelopment Project Entitlements and Transaction Documents Presentation, including (30 minutes) (Action Item):
  - a) Owner Participation Rules
  - b) General Relocation Guidelines
- VI. Future Agenda Items (5 min) (Action Item)
- VII. Announcements from Board members (5 min)
- VIII. Public Comments (15 min)
- IX. Adjourn

## **MEETING AGENDAS AVAILABLE ON E-MAIL**

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The Treasure/Yerba Buena Island Citizen Advisory Board meets on Treasure Island in Building 442, City Hall, 1 Dr. Carlton Goodlett Place or at the San Francisco Redevelopment Agency. All buildings are accessible to persons using wheelchairs, and others with disabilities. For American Sign Language interpreters or use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please telephone 554-6789 or 274-0660 at least 48 hours before a meeting.

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## **Treasure Island Website**

Check out the Treasure Island website at [www.sfgov.org/treasureisland](http://www.sfgov.org/treasureisland) to find out about activities and facilities on Treasure Island, special events venues for rent, or to review the Treasure Island Development Authority's agendas and minutes.

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**AGENDA ITEM 6A**  
**Treasure Island Development Authority**  
**City and County of San Francisco**  
**Meeting of February 23, 2011**

**Subject:** Resolution Approving and Authorizing (i) the Execution of a First Amendment to the Memorandum of Understanding with the San Francisco Public Utilities Commission for Adjustment of Utility Rates, and (ii) the Adjustment of Utility Rates to Establish an Interruptible Water Rate for Public Uses Retroactive to July 1, 2010 (Action Item)

**Contact:** Richard A. Rovetti, Deputy Director of Real Estate

**Phone:** 415-274-3365

**BACKGROUND**

Treasure Island Development Authority (the "Authority") performs its Base Caretaker duties on behalf of the United States Navy (the "Navy") pursuant to the Base Caretaker Cooperative Agreement, as amended (the "Cooperative Agreement"), between the Navy and the Authority. The Cooperative Agreement was initially signed on March 12, 1997, between the City and the Navy. In November 1998, the Board of Supervisors authorized the Authority to enter into the Cooperative Agreement and assume the City's obligations thereunder. Under the Cooperative Agreement, the Authority is referred to as the "Caretaker."

General Caretaker obligations are described in Articles I through XI of the Cooperative Agreement. Specific duties of the Caretaker are described in Functional Annexes 1 through 9. Functional Annex 6 – Utilities Services, describes the Caretaker responsibilities with respect to operation and maintenance of the utilities systems at Treasure and Yerba Buena Islands (collectively, the "Island"). The San Francisco Public Utilities Commission ("SFPUC") performs the Caretaker's responsibilities under Functional Annex 6 on behalf of the Authority.

Utility rates were initially established by the Navy to defray costs of utility commodities, operations and maintenance. The Navy assigned the Caretaker the responsibility to manage the utility systems in 1998, but continued to set rates through 1999. On October 1, 2000, Modification No. P00013 amended the Cooperative Agreement to allow the Caretaker to establish uniform rates for utilities on the Island.

On March 8, 2006, the Authority's Board of Directors adopted Resolution No. 06-17-03/08 approving the modification of utility rates and the establishment of uniform utility rates for all metered utility consumers on Island, including federal utility consumers. Additionally, Project Staff was authorized to continue to work with SFPUC to make further recommendations to the Authority Board regarding future utility rate adjustments. On October 22, 2008, the Authority's Board of Directors adopted Resolution No. 08-63-10/22 approving the Memorandum of Understanding Regarding Utility Rate Adjustments (the "2008 MOU") between the Authority and the SFPUC to document current utility rates and allow Authority staff and SFPUC staff to

work together to review utility rates and to make further recommendations for future utility rate adjustments to the Authority Board.

In keeping with the 2008 MOU, Project Staff and SFPUC have been working together to review rates, specifically to review the water rate. Over the past year, Project Staff and SFPUC have reviewed and analyzed the potential adoption of an interruptible service for public uses of water on Island consistent with the plan currently used in the City and County of San Francisco. SFPUC's Rate Schedule W-3B defines that an interruptible service is when a service can be interrupted for water shortages and other emergencies at the discretion of the SFPUC Water Enterprise. The SFPUC reviewed the water rate schedules applicable for public uses, including public buildings, parks, street sprinkling and flushing, within the City and determined that Schedule W-3B, which provides for interruptible public uses within the City, at a rate of \$2.41 per hundred cubic feet ("CCF") or \$3.2219 per thousand gallons ("kgal"), may be applicable for use on the Island.

Project Staff and SFPUC have negotiated a First Amendment to the 2008 MOU that will retroactively offer a new interruptible water rate plan beginning July 1, 2010 for irrigation of open space and recreational areas throughout the Island. This water rate service plan will be available to the Authority and its subtenants that use water to irrigate recreational athletic fields on Island.

### **FINANCIAL IMPACT**

Under the 2008 MOU, the water rate for the Island is \$5.40 per kgal. This rate applies to both potable and irrigation uses. Under the proposed First Amendment, the Project Staff and SFPUC propose to implement a new rate for irrigation of public and recreational spaces as follows:

- Effective retroactively on July 1, 2010, the rate will be \$3.2219 per kgal
- Effective July 1, 2011, the rate will be \$3.6230 per kgal
- Effective July 1, 2012, the rate will be \$4.0775 per kgal
- Effective July 1, 2013, the rate will be \$4.3449 per kgal

The Authority and its eligible subtenants that use water to irrigate can elect to avail themselves of this new interruptible service rate. The adoption of the interruptible service rate will benefit the Authority and its eligible Island subtenants by reducing the cost for water rate from \$5.40 per kgal to \$2.41 per CCF or \$3.2219 per kgal. With the adoption of this new interruptible water rate for irrigation, the SFPUC estimates that the Authority's water bill will be reduced by approximately \$55,000 from July 1, 2010 through December 31, 2010.

### **RECOMMENDATION**

Project Staff recommends that the Authority Board of Directors approve (i) the First Amendment to the Memorandum of Understanding with the San Francisco Public Utilities Commission in substantially the form attached hereto as Exhibit A, and (ii) the adjustment of water rates for the Island by establishing an interruptible water service rate consistent with SFPUC's Rate Schedule W-3B retroactive to July 1, 2010.

EXHIBIT A – First Amendment to the Memorandum of Understanding between the San Francisco Public Utilities Commission and Treasure Island Development Authority

Prepared by: Richard A. Rovetti, Deputy Director of Real Estate  
For: Mirian Saez, Director of Island Operations





[Adoption of Interruptible Water Service Rate]

**Resolution Approving and Authorizing (i) the Execution of a First Amendment to the Memorandum of Understanding with the San Francisco Public Utilities Commission for Adjustment of Utility Rates, and (ii) the Adjustment of Utility Rates to Establish an Interruptible Water Rate for Public Uses Retroactive to July 1, 2010.**

WHEREAS, Former Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America, acting by and through the Department of the Navy (the "Navy"); and,

WHEREAS, The Base was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California legislature (i) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of Supervisors, and, (ii) with respect to those portions of the Base which are subject to the Tidelands Trust, vested in the Authority the

1 authority to administer the public trust for commerce, navigation and fisheries as to such  
2 property; and,

3 WHEREAS, The Board of Supervisors approved the designation of the Authority as a  
4 redevelopment agency with powers over Treasure Island in Resolution No. 43-98, dated  
5 February 6, 1998; and,

6 WHEREAS, On March 12, 1997, the City and the Navy entered into the Base  
7 Caretaker Cooperative Agreement ("Cooperative Agreement") for the management and  
8 operation of the Base; and,

9 WHEREAS, In November 1998, the San Francisco Board of Supervisors adopted  
10 Resolution No. 938-98 authorizing the Authority to enter into the Cooperative Agreement with  
11 the Navy and to assume responsibility for certain caretaker duties at the Base including the  
12 operation, maintenance and repair of the Navy's utility systems that service Treasure Island  
13 and Yerba Buena Island; and,

14 WHEREAS, The Cooperative Agreement includes various Functional Annexes that  
15 describe in detail the caretaker duties for which the Authority is responsible under the  
16 Cooperative Agreement, among which Functional Annex 6 - Utilities Services describes the  
17 operation and maintenance of the utility systems and the delivery of utilities to the occupants  
18 and users of Treasure Island and Yerba Buena Island; and,

19 WHEREAS, In accord with the terms of the Cooperative Agreement, the SFPUC has  
20 performed the Authority's responsibilities under Functional Annex 6 – Utilities Services,  
21 including, without limitation, the operation and maintenance of the utility systems and the  
22 delivery of utilities services to the Base; and,

23 WHEREAS, On October 1, 2000, the Cooperative Agreement was amended by  
24 Modification No. P00013, to allow the Authority, as the Caretaker under the Cooperative  
25 Agreement, to establish uniform rates for utilities consumers on the Base; and,

1 WHEREAS, Utilities commodities purchasing, operation and maintenance  
2 responsibilities have been work ordered by the Authority to the San Francisco Public Utilities  
3 Commission ("SFPUC"); and,

4 WHEREAS, On March 8, 2006, the Authority's Board of Directors adopted Resolution  
5 No. 06-17-03/08 approving the modification of utility rates, approving the establishment of  
6 uniform utility rates for all metered utility consumers on Treasure Island and Yerba Buena  
7 Island, including federal utility consumers, and authorizing Project Staff to continue to work  
8 with the SFPUC to make further recommendations to the Authority Board regarding future  
9 utility rate adjustments; and,

10 WHEREAS, On October 22, 2008, the Authority's Board of Directors adopted  
11 Resolution No. 08-63-10/22 approving the Memorandum of Understanding Regarding Utility  
12 Rate Adjustments (the "2008 MOU") between the Authority and the SFPUC to document  
13 current utility rates and allow Authority staff and SFPUC staff to work together to review utility  
14 rates and make further recommendations for future utility rate adjustments to the Authority  
15 Board; and,

16 WHEREAS, In keeping with the 2008 MOU, Project Staff and SFPUC staff have been  
17 working together to review rates on Treasure Island and Yerba Buena Island (collectively, the  
18 "Island"), and have recommended that the Authority Board adopt an interruptible water  
19 service rate for public and recreational irrigation on the Island that is consistent with the plan  
20 currently used elsewhere in the City and County of San Francisco; and,

21 WHEREAS, SFPUC's Rate Schedule W-3B defines an interruptible service as a  
22 service that can be interrupted for water shortages and other emergencies at the discretion of  
23 the SFPUC Water Enterprise and sets the interruptible water service rate as follows:

24 (i) effective July 1, 2010, the rate is \$3.2219 per kgal, (ii) effective July 1, 2011, the rate is  
25

1 \$3.6230 per kgal, (iii) effective July 1, 2012, the rate is \$4.0775 per kgal, and (iv) effective July  
2 1, 2013, the rate is \$4.3449 per kgal; and,

3 WHEREAS, Under the current utility rate schedule for the Island reflected in the 2008  
4 MOU, the water rate on Island for both potable and irrigation uses is \$5.40 per 1,000-gallons  
5 ("kgal"); and,

6 WHEREAS, The Authority staff and SFPUC staff have negotiated a First Amendment  
7 to the 2008 MOU that will retroactively offer the interruptible water service rate consistent with  
8 the SFPUC's Rate Schedule W-3B retroactive to July 1, 2010 for irrigation of open space and  
9 recreational areas throughout the Island; and,

10 WHEREAS, The adoption of the interruptible service rate will benefit the Authority and  
11 its eligible Island subtenants by reducing the rate for water from \$5.40 per kgal to \$2.41 per  
12 hundred cubic feet ("CCF") or \$3.2219 per kgal, resulting in a cost savings of \$55,000 from  
13 July 1, 2010 through December 31, 2010; and,

14 WHEREAS, The Authority Staff recommends (i) adopting the interruptible water service  
15 rate consistent with SFPUC's Rate Schedule W-3B, and (ii) entering into the First  
16 Amendment; Now, Therefore Be It

17 RESOLVED, That the Board of Directors hereby approves the modification of utility  
18 rates to reflect the adoption of the interruptible water service rate for use and irrigation of open  
19 spaces and public recreational areas consistent with SFPUC's Rate Schedule W-3B; and, be  
20 it

21 FURTHER RESOLVED, That the Board of Directors hereby approves the terms of the  
22 First Amendment to the 2008 MOU and authorizes the Director of Island Operations or her  
23 designee to execute said First Amendment in substantially the form attached hereto as Exhibit  
24 A; and be it  
25

FURTHER RESOLVED, That the Board of Directors hereby finds that (i) entering into the First Amendment will serve the goals of the Authority and the public interests of the City, and (ii) the terms and conditions of the First Amendment are economically reasonable; and be it

FURTHER RESOLVED, That the Board of Directors hereby authorizes the Director of Island Operations to enter into any additions, amendments or other modifications to the First Amendment that the Director of Island Operations determines in consultation with the City Attorney are in the best interests of the Authority, that do not materially increase the obligations or liabilities of the Authority, that do not materially reduce the rights of the Authority, and are necessary or advisable to complete the preparation and approval of the First Amendment, such determination to be conclusively evidenced by the execution and delivery by the Director of Island Operations of the documents and any amendments thereto.

## CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on February 23, 2011.

Jean-Paul Samaha, Secretary





**First Amendment to the  
Memorandum of Understanding Between  
San Francisco Public Utilities Commission and  
the Treasure Island Development Authority**

**New Water Interruptible Rate for Use and Irrigation  
Open Space and Public Recreations Areas  
Treasure Island and Yerba Buena Island**

**Dated as of March 1, 2011**

THIS FIRST AMENDMENT ("Amendment No. 1") to the MEMORANDUM OF UNDERSTANDING ("MOU"), is made on March 1, 2011 between the SAN FRANCISCO PUBLIC UTILITIES COMMISSION (the "SFPUC"), a department of the City and County of San Francisco (the "City"), and the TREASURE ISLAND DEVELOPMENT AUTHORITY, a California public benefit corporation (the "Authority"). The SFPUC and the Authority may be collectively referred to herein as the "Parties."

**RECITALS**

A. Whereas the Parties entered into the Memorandum of Understanding Regarding Utility Rate Adjustments dated as of October 22, 2008 (the "2008 MOU"). Under Section 2 of the MOU, the SFPUC and the Authority agreed to work together to review utility rates and to make further recommendations on an as-needed basis, and if both Parties agree for any adjustment, that a recommendation be made to the Board of Directors of the Authority for future utility rate adjustments.

B. Whereas the Authority requested the SFPUC in November 2010 to review the current water rate of \$5.40 per 1,000-gallons ("kgal") and the potential of having a different rate for irrigation specific use at open spaces and public recreational areas at Treasure Island and Yerba Buena Island ("the Islands").

C. Whereas the SFPUC has a set of rate schedules for providing water and wastewater services to its customers within and outside the City.

D. Whereas the SFPUC's current water rate schedule is effective from July 1, 2010 through June 30, 2011, and will change based on the City-approved published schedule occurring on July 1<sup>st</sup> of each subsequent year.

E. Whereas the SFPUC reviewed the water rate schedules applicable for public uses, including public buildings, parks, street sprinkling and flushing, within the City and determined that Schedule W-3B which provides for an interruptible public uses rate within the City of \$2.41 per hundred cubic feet ("CCF") or \$3.2219 per kgal may be applicable for use at the Islands.

NOW, THEREFORE, IN CONSIDERATION of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the SFPUC and the Authority hereby agree to the following:

## AGREEMENT

### 1. New Interruptible Water Rate

- a. The current utility rates at the Islands will be amended to include a new interruptible water rate of \$3.2219 per kgal for use and irrigation of open spaces and public recreational areas and will be effective retroactively from July 1, 2010 through June 30, 2011.
- b. Customers requesting an interruptible water rate will be subject to a water audit by the SFPUC prior to approval.
- c. The interruptible water rate will follow the SFPUC's Schedule W-3B - Interruptible Public Uses as follows:
  - (1) Effective July 1, 2011, the rate will be \$3.6230 per kgal.
  - (2) Effective July 1, 2012, the rate will be \$4.0775 per kgal.
  - (3) Effective July 1, 2013, the rate will be \$4.3449 per kgal.

## CONTRACT TO REMAIN IN EFFECT

Except as expressly modified by this Amendment, the 2008 MOU shall remain in full force and effect, and this Amendment shall be subject to all provisions of the MOU, except as herein amended.

## AUTHORITY TO EXECUTE

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date first above written.

SFPUC:

THE AUTHORITY:

CITY AND COUNTY OF SAN  
FRANCISCO, acting by and through its  
Public Utilities Commission

TREASURE ISLAND DEVELOPMENT  
AUTHORITY, a California public benefit  
corporation

By: \_\_\_\_\_  
Ed Harrington  
SFPUC, General Manager

By: \_\_\_\_\_  
Mirian Saez  
TIDA, Director of Island Operations

Approved as to form:

Approved as to form:

Dennis J. Herrera,  
City Attorney

Dennis J. Herrera,  
City Attorney

By: \_\_\_\_\_  
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**AGENDA ITEM 7**  
**Treasure Island Development Authority**  
**City and County of San Francisco**  
**Meeting of February 23, 2011**

- Subject:** Treasure Island/Yerba Buena Island Redevelopment Project Entitlements and Transaction Documents Presentation, including: (i) Draft Exhibits to the *Disposition and Development Agreement by and between Treasure Island Development Authority and Treasure Island Community Development, LLC*, including the (a) Draft *Open Space Plan*, and (b) Draft *Financing Plan*; and (ii) Draft *Economic Development Conveyance Memorandum of Agreement for the Conveyance of Naval Station Treasure Island*
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**I. Introduction**

The Treasure Island Development Authority Board of Directors ("TIDA") meeting on January 12, 2011 marked the beginning of the final phase of the Treasure Island/Yerba Buena Island Redevelopment Project ("Project") planning and entitlements process, and the TIDA meeting on February 23, 2011 continues this course of document review.

Documents that have already been presented at previous Treasure Island/Yerba Buena Island Citizens Advisory Board ("CAB") and TIDA meetings are:

- Draft Exhibits to the Development and Disposition Agreement, including the
  - Land Use Plan
  - Phasing Plan
  - Infrastructure Plan
  - Housing Plan
- Draft *Transition Housing Rules and Regulations for the Villages at Treasure Island*
- Draft *Redevelopment Plan for the Treasure Island / Yerba Buena Island Redevelopment Project*
- Draft *Treasure Island and Yerba Buena Island Subdivision Code*
- Draft *Interagency Cooperation Agreement*
- Draft *Design Review and Document Approval Procedure*
- Draft *Development Agreement between Treasure Island Community Development, LLC. and the City and County of San Francisco*
- Draft *Sustainability Plan*
- Draft *Treasure Island and Yerba Buena Island Design for Development*

At the February 23, 2011 TIDA meeting, a presentation will be made on (i) the Draft *Treasure Island and Yerba Buena Island Open Space Plan*, (ii) the Draft *Financing Plan*, and (iii) the Draft *Economic Development Conveyance Memorandum of Agreement for the Conveyance of Naval Station Treasure Island*. At future CAB meetings, staff will make presentations regarding other Project Documents and DDA Exhibits.

Copies of these documents are on file with the Authority and OEWD, and have been made available on-line for the public to review at: <http://www.sftreasureisland.org/> (the main Authority website) and: <http://sftreasureisland.org/index.aspx?page=26> (for a direct link to the documents). They are listed under "Master Development Submittals."

As extensive project background, planning process summary, project overview, project documents summary as well as the 2006 and 2010 Term Sheet summaries were provided in a previous memo for the January 12, 2011 TIDA meeting, they have been omitted from this memo for brevity. However, those items provide a background and context for the project documents review and final approvals, and should be retained for reference.

This staff summary includes the following sections:

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|---|------------|
| I. Introduction   | Pages 1-2  |
| II. Draft Project Documents                                 | Pages 2-16 |
| a. Attachments to the Disposition and Development Agreement |            |
| i. Draft Open Space Plan                                    |            |
| ii. Draft Financing Plan                                    |            |
| b. Draft Navy Conveyance Agreement                          |            |

## DRAFT PROJECT DOCUMENTS

The Project Documents advance and refine plans which represent more than ten years of work by the CAB, TIDA, TICD, the Board of Supervisors ("BOS") and other key stakeholders including local community organizations, residents and members of the public. The Project Documents are generally categorized as follows:

1. Authorizing Documents. Generally speaking, the actions that authorize the project are more general and comply with strict legal processes. Authorizing Actions include the preparation and certification of an Environmental Impact Report, adoption of the Redevelopment Plan, Amendments to the City Planning Code to make the Redevelopment Plan consistent with existing law, and the required Consistency Findings with the Bay Plan.
2. Implementing Documents. The actions that implement the project are more specific and detailed, and there is more flexibility in the exact form that these documents take. Implementing documents for the Redevelopment Plan for Treasure Island include, among others, the Development and Disposition Agreement ("DDA") and all of its exhibits, the Design for Development, the Mitigation Monitoring and Reporting Plan, the Public Trust Exchange Agreement, and documentation related to the Early Transfer by the Navy.

3. Procedural Documents. The procedural documents are companion pieces to the implementing documents that go into detail about the processes that the Authority and the City will follow in implementing the project. The agreements in the implementing documents will be enforced through the DDA itself, as well as through the procedural documents: a Design Review and Document Approval Procedure, an Interagency Cooperation Agreement, and the Treasure Island and Yerba Buena Island Subdivision Code.

## **II. Draft Open Space Plan**

The system of parks and open space on Treasure Island would include neighborhood- and visitor-serving parkland, ecological, recreational, neighborhood, and cultural areas. The approximately 300 acres of parks and open space would include a wide variety of programmed and natural habitat elements, including:

- Public spaces and recreation areas;
- Shoreline trails and access improvements, including the proposed extension of the San Francisco Bay Trail from the Bay Bridge bicycle and pedestrian path on the new East span, down Yerba Buena Island, and around the entire perimeter of Treasure Island;
- A stormwater wetland of about 10 to 15 acres to provide water quality treatment and natural habitat;
- An urban farm of approximately 20 acres;
- Cultural park adjacent to Building 1;
- Building 1 Plaza adjacent to the ferry quay and Transit Hub;
- a pedestrian promenade along Clipper Cove on the south shoreline of Treasure Island;
- Preserved, enhanced and restored wildlife habitat on Yerba Buena Island;
- New hilltop park with vista points, overlooks, and trails on Yerba Buena Island; and
- Approximately 30-40 acres proposed on the east side of Treasure Island for a regional sports complex with baseball, softball, gaelic football, rugby and soccer fields, as well as other sports facilities.

The Waterfront Plaza, Cityside Waterfront Park, Northern Shoreline Park, Eastern Shoreline Park, and Clipper Cove Promenade would provide extensive public access to the shoreline on all sides of Treasure Island. The gardens adjacent to the historic Nimitz House on Yerba Buena Island would be improved as part of the open space program.

A separate Habitat Management Plan ("HMP") for Yerba Buena Island is proposed to restore, enhance and preserve vegetation and wildlife habitat in the undeveloped areas on Yerba Buena Island. A revised draft of the HMP will be presented at the March 1, 2011 CAB meeting, updating the draft that was published in December 2009 and presented to the CAB and TIDA Board in January 2010. The Open Space Plan describes TICA's obligations under the HMP.

The Open Space Plan will be an Attachment to the Disposition and Development Agreement, along with the Housing Plan, Phasing Plan and Infrastructure Plan, among others. The purpose

of the document is to describe the open space program and improvements to be provided as part of the infrastructure and horizontal development of Treasure Island and Yerba Buena Island and establish Treasure Island Community Development, LLC (TICD) responsibilities for the delivery of the open space program, site and landscape improvements, and summarize the funding sources and uses, as well as mechanisms for long term operations and maintenance, as more particularly defined in the Financing Plan. The Open Space Plan defines specific programs and standards for the improvements that shall be provided in each open space area.

#### **A. Open Space Typology**

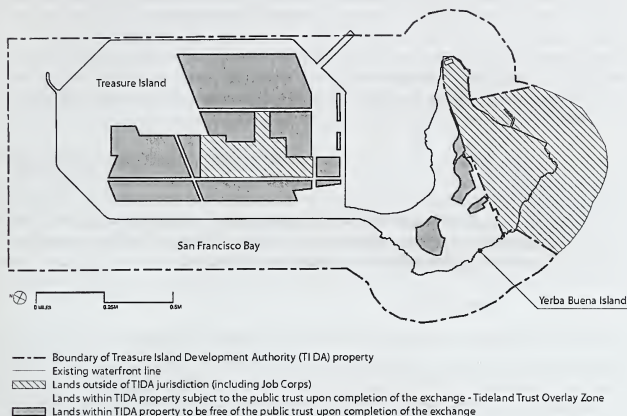
The Islands' open space program is made up of eight distinct landscape types – six for Treasure Island and two for Yerba Buena Island. The typologies are: Shoreline Park, Sports and Recreation Park, Urban Agriculture Park, Northern Shoreline and The Wilds, The Urban Core, Pedestrian Network, Yerba Buena Island Habitat management areas and Yerba Buena Island Hilltop Park. Each of the typologies as well as individual parks are discussed individually in the Open Space Plan.

#### **B. State Tidelands Trust**

Treasure Island is subject to the Tidelands Trust doctrine administered by the State of California. Under the Tidelands Trust doctrine, title to tidelands and lands under navigable waters is held in trust by the State for the benefit of the people of California. As a naturally occurring island above the mean high tide line, Yerba Buena Island is not subject to the Tidelands Trust. Uses of trust lands are generally limited to waterborne commerce, navigation, fisheries, water-oriented recreation, including commercial facilities that must be located on or adjacent to water, and environmental preservation and recreation. Ancillary or incidental uses that promote trust uses or accommodate public enjoyment of Tidelands Trust lands are also permitted, such as hotels, restaurants and specialty retail. Pursuant to the Treasure Island Conversion Act (AB 699), TIDA is the trustee for the Tidelands Trust.

The majority of the open space areas on Treasure Island and Yerba Buena Island is subject to the Tidelands Trust, with exception to the following areas: Sports Park, the southeast portion of the Urban Agriculture Park, the Cityside Neighborhood Parks, and the Eastside Commons. The diagram below shows the areas within Treasure Island that will be subject to the Tidelands Trust and those excluded from it, upon completion of the Tidelands Trust exchange authorized under the Treasure Island Public Trust Exchange Act.





### C. Open Space Improvements

The Open Space Improvements section of the Open Space Plan details the standards and requirements for paving, lighting, grading and drainage, stormwater treatment, soil preparation and fine grading, planting, irrigation, site furnishings and special features.

### D. Ownership and Management

TIDA will be responsible for the operations and management of all of the public open space and recreation facilities during and following the development process. The operations and maintenance of the parks and open space on all privately owned lands will be responsibility of the property owners; however, these parks and open spaces are required to be publicly accessible. It is anticipated that TIDA may elect to contract with future project partners or service providers to provide park management, recreational and cultural programming, and operations and maintenance services. Funding for the ongoing operations and maintenance of public parks and public open space will come from:

- Homeowner's association (HOA) fees and dues on both residential and commercial projects
- CFD proceeds: remainder taxes above debt service on CFD Bonds. These funds will be transferred to a parks and open space maintenance account which will be managed by TIDA and used as needed to help pay for parks and open space maintenance costs.

Total Project open space and maintenance costs during the development period are expected to be approximately \$80.5 million. During that period, approximately \$92.9 million in funding sources would be available to cover these costs, with approximately \$5.5 from interim income/lease revenues, \$35.2 million from the residential and retail master and individual residential HOAs, \$18.5 million from the Developer subsidy, and \$33.7 million from CFD remainder taxes, resulting in a operations and maintenance funding surplus of approximately \$12.4 million.

Over the long term, after the development period has ended, annual operating costs are estimated to be approximately \$9.1 million per year. Once the development period has ended, approximately \$13.6 million per year would be available from a combination of HOA dues and CFD remainder taxes, \$3.9 and \$9.7 million, respectively. This would result in an annual surplus of approximately \$4.5 million which could be used for additional capital projects, major repairs or put into a reserve fund for future operations and maintenance.

#### **E. Sea Level Rise**

In order to address future potential sea level rise and balance the mandate to provide maximum public access and views to the bay, an adaptive management strategy has been proposed and would be implemented over the long term build out of the Project. The design of the park system accommodates and responds to this adaptive management strategy, through its ability to respond to future sea level rise by an adaptive management zone along the island edge. The Project's approach to sea level rise consists of a three tiered strategy, as summarized below:

- Design and build a project perimeter at an elevation such that high tides, waves, surges, as well as a mid-term rise in sea levels (defined in the above referenced reports as 16 inches by 2050) can be accommodated without any additional adaptation measures until at least the year 2050 and possibly beyond
- Design and build all significant assets such as building structures and infrastructure at an elevation that is over 3 feet higher than what is required today for a 100-year level flood protection
- Create a project-specific Adaptation and Funding Strategy for the long-term (defined in the above referenced reports as 55 inches by 2100) that can be implemented after sea levels have risen 16 inches

#### **F. Existing Open Space and Recreation Facilities**

The Project Area includes several recreation and open space facilities, including the existing Gym located in east central area of Treasure Island, several little league baseball fields located on the east side of the island, two Rugby fields, two Gaelic Football fields, and an existing softball field in the center part of the island adjacent to the Job Corp campus. Many of the existing facilities and open spaces will be retained and operated throughout the early phases of infrastructure development. Several of the existing recreational fields may also be incorporated in the Sports Park area based on further programming and design coordination during the design

phases. The Gym facility will be retained as part of the Islands Open Space Facilities and integrated with the Sports Park as part of the final design phases.

TICD and TIDA will continue to work with existing recreational users to provide access and maintain operations of these facilities during build-out of the proposed Project. TICD and TIDA will also continue to work with existing recreation users to identify potential opportunities for them to participate in the programming and operation of the proposed recreational facilities.

### **III. Draft Financing Plan**

The Financing Plan, an attachment to the DDA, represents extensive negotiations between TIDA and TICD with the goal of creating an economically self-sufficient Project that minimizes any adverse fiscal impact on the City. It reflects TIDA's Redevelopment Plan goals, provides for a land payment to the Navy, and a mechanism to generate a sufficient rate of return for investors. Embedded within these goals is the expectation that the following core public benefits will be generated:

- Generation of more than \$200 million towards the creation of up to 2,400 affordable units, thirty percent (30%) of all new housing;
- Creation of one of the largest parks and open space improvement projects in San Francisco since the construction of Golden Gate Park; and,
- Creation of more than 2,000 annual construction jobs and approximately 3,000 permanent jobs.

#### **A. General Requirements**

The financing agreements under the DDA are consistent with the 2010 Update to the Development Plan and Term Sheet endorsed by the CAB and unanimously approved by the Authority Board and Board of Supervisors in 2010. Specifically, those documents provide that any appropriate Financing Plan for the Project should meet the following requirements:

- Project financing should rely on private capital and land-secured tax exempt financing (such as Mello-Roos special taxes/bonds, as described in more detail below) that leverages private investment. Project financing should not rely on the City's General Fund and should be structured to minimize adverse impacts to the General Fund.
- The Project must be financially feasible and provide a risk-adjusted market rate of return to the Developer to support the required investment of private capital in the Project and the transaction structure should simultaneously give priority to the delivery of the Project's core public benefits (like parks, jobs and affordable housing).
- The transaction structure for the Project should provide a mechanism for TIDA to participate in profits above the threshold return (defined below), if any, from the development of the Project.

## B. Project Costs

The Project must pay the costs of completing the "horizontal" development and other project-related costs using private capital and revenues generated by the Project itself. These costs include:

- Completing all pre-development planning and entitlement work, including engineering, urban design and land planning, architectural, legal and financial work, market and feasibility studies and environmental review under CEQA;
- The costs associated with the geotechnical improvements, initial improvements to addressing potential future sea level rise, and conducting necessary environmental remediation, as well as associated soft costs and management costs;
- Replacing and/or building the backbone wet and dry utilities, including a low-pressure potable water system, a reclaimed water system, an auxiliary fire water supply system, new sanitary sewer and storm drainage facilities, and joint trenches throughout the area to accommodate electrical, communication, and gas utilities;
- Preparing infrastructure and delivering sites for affordable housing developments at no cost, in developable condition with all of the requisite infrastructure and paying subsidies, as required in the Housing Plan, for vertical construction of Authority affordable housing to include housing for formerly homeless families and individuals (TIHDI Housing);
- Completing public open space improvements including public access trails, parks, shoreline improvements and other waterfront improvements to enhance public use, and enjoyment of views of the San Francisco Bay;
- Building public transportation improvements, including a new ferry terminal, lease payments for new ferry boats, and the cost to purchase or lease shuttle buses for the new on-island free shuttle service;
- Completing the renovation of Building 2 consistent with the Secretary of the Interior Standards for Rehabilitation and a subsidy of the initial phase of retail development before it is financially viable to ensure that core neighborhood serving retail uses are developed in the early phases of the project;
- Satisfying any other requirements necessary to convert the raw land on Treasure Island into developable pads ready for development;
- Providing space and funding for new and improved community facilities;
- Funding for the ongoing operations and maintenance of public parks and public open space as further detailed above and in Draft Open Space Plan; and

- A transportation operating subsidy to enhance funding for the project's unique transit services and transportation demand management programs. The DDA and Transportation Plan define a payment schedule of fixed payments to be made by the Developer.

As shown in Exhibit B, total project costs are estimated to be approximately \$1.45 billion.

### **C. Sources of Funds to Pay Projects Costs.**

As further shown on Exhibit 1, the sources of funding for development will come primarily from a combination of private capital, including proceeds from land sales, and tax-exempt financing. It is estimated that the private capital contribution to the Project – in the form of equity and/or private debt – will be approximately \$517 million. The Project Documents contemplate that significant private capital will need to be invested early to create the land values necessary to support the land-secured tax-exempt financing described below.

#### *Tax-Exempt Financing*

Tax-exempt financing for construction of public infrastructure and eligible community benefits, including affordable housing, is expected to generate about \$935 million. This form of financing uses tax-exempt financing tools made possible through the Developer's investment of private capital in the Project to capture certain tax revenues that would not otherwise exist but for the Project. Some, like Mello-Roos special taxes/bonds, are land-secured. To qualify for tax-exempt status, the proceeds of these types of financing are generally limited to paying for the construction of public improvements, like streets and other public infrastructure, public parks and open space, and affordable housing.

Whether tax-exempt or taxable, these types of debt are generally non-recourse to the public entities that issue them – that is, in this Project, neither the TIDA nor the City would be legally responsible for paying the debt if the economic projections regarding the Project prove incorrect, and the tax revenues collected are not enough to make required payments on the bonds. Land-secured tax exempt financing typically takes the form of the levying of special taxes in designated Community Facilities Districts and the issuance of Mello-Roos bonds supported by those taxes. Another form of tax-exempt financing, which is not land-secured, is the allocation of property tax increment associated with the new property tax revenues produced in a redevelopment project area and the issuance of tax allocation bonds based on that tax increment.

- **Mello Roos Community Facilities District Bonds:** This financing mechanism allows the Developer to impose a special tax on top of the City's annual property tax bill for designated market development parcels, so long as the proceeds from this special tax are used to cover the costs of eligible public facilities or services, such as utilities, roads, geotechnical improvements and parks and open space. Mello-Roos bonds do not involve an investment of City's General Fund dollars into the Project; they are supported by a self-appointed tax on the private development and the value of the private land in the district. Here, Mello-Roos bonds will likely be used to help jump start development, before the Project has generated enough property tax increment to help finance infrastructure. The Mello-Roos special taxes will be paid by the Developer and

ultimately by most residential unit owners and commercial tenants. Mello-Roos bonds are often used in large-scale development projects in California. Mello Roos Bonds have been used successfully in San Francisco in connection with the Mission Bay, Rincon Hill and Hunters Point Shipyard Phase 1 developments. Under the Project Documents, the special taxes will be levied only on market-rate development parcels. The special Mello-Roos tax will not be levied on TIDA-sponsored affordable housing units or public open space or parks. Based on the overall value of the proposed development, the Mello-Roos Bond proceeds to finance the infrastructure are expected to total approximately \$422 million.

- **Property Tax Increment Financing:** In redevelopment project areas such as the ones proposed under the proposed Redevelopment Plan for the Project, a portion of the net new property tax revenues generated by new development or the tax appreciation of existing property can be allocated to pay for public infrastructure that primarily serves the project area. Property tax allocation bonds, which are supported by that new tax increment, can be issued by TIDA to provide funds to construct that public infrastructure as well as affordable housing. The debt service on such bonds is paid and the bonds are ultimately retired by applying available property tax increment generated by the Project.

Property tax increment financing is typical of urban revitalization projects in California, and nationwide, as a means for redevelopment activity to self-finance necessary improvements through the temporary capture of property tax revenues that would not exist but for the revitalization activity itself. The property tax increment financing in turn supports the community revitalization efforts. The proceeds of property tax increment financing will be used to build public improvements such as affordable housing and public infrastructure (e.g., parks, roads, transportation infrastructure, utilities and geotechnical improvements). Overall, for this Project it is estimated that approximately \$514 million will be available from property tax increment financing.

*Interim Lease Revenues:* Interim Lease Revenues from the existing residential and commercial properties will continue to be collected by TIDA, and will be used to pay for TIDA costs. To the extent excess funds remain after TIDA costs, net revenue will then be used to help make land payments to the Navy and other specified project related costs.

#### **D. Distribution of Net Project Revenues.**

The distribution of net project revenues outlined in the Financing Plan is consistent with the EDC MOA Terms. The transaction structure is designed to allow TICD to receive a commercially reasonable market rate return on its investment of private capital, with TIDA participating with the Navy in any profits that exceed market expectations. Most importantly for the City, TIDA does not bear any of the risk if the targeted returns are not achieved; the key public benefits that are embodied in the project – like affordable housing, parks and open space, and community facilities – are treated in the Financing Plan as net horizontal project costs and, thus, must be



provided by TICD prior to and regardless of their economic return. The proposed transaction structure would distribute the net project revenues as follows:

- First, 100% to TICD, until TICD has achieved a cumulative 18% annual internal rate of return ("IRR")
- Second, 100% to the Navy, so long as TICD's IRR remains at 18%, until the Navy has received \$50 million;
- Third, to 100% to TICD, until TICD has achieved a cumulative unleveraged 22.5% annual IRR;
- Fourth, to be split 55% to TICD, 10% to TIDA and 35% to the Navy until TICD has achieved a cumulative unleveraged 25% IRR; and
- Fifth, to be split 50% to TICD, 15% to TIDA and 35% to the Navy above an IRR of 25%

In addition to the above, all net available tax increment would flow directly to TIDA once the developer achieves a 25% IRR.

This transaction structure is designed to allow the Developer to receive a risk-adjusted market rate of return on its investment, with TIDA sharing in any profits above the specified threshold return, but none of the financial downside risk. If the threshold returns are not met, the Project may proceed more slowly, but neither the TIDA nor the City would bear any financial costs if the threshold return were not achieved. TIDA's independent real estate economic consultants, Economic and Planning Systems, Inc. and C.H. Elliott & Associates, have determined based on their experience with a multitude of complex public-private joint development projects that the transaction structure defined above, including the return threshold for the Developer, is commercially reasonable taking into account the complexity and risk inherent in the revitalization of Treasure Island.

The discussion of sources and uses of Project costs and revenues described above provides a static summary of total financing, total costs and total revenues for the full development of the Project. In actuality, these costs and revenues will be incurred over time from the inception of development planning through the build out of the Project. These timing issues have an enormous impact on the overall financial feasibility of the Project. Indeed, full vertical build out of the Project is anticipated to take up to 20 years or more, depending on market conditions.

As noted above a large proportion of the costs will be incurred in the initial years, and revenues will follow much later. This is particularly true as a result of the upfront significant infrastructure improvements that must be made in the early phases to support development of the land. The need to expend large sums of private capital far in advance of generating adequate revenues creates a significant amount of additional financial risk for the Developer.

#### **E. Fiscal Impacts Study.**

One of the commitments of the Project is to minimize any adverse impacts on the City's General Fund. TIDA's real estate economics advisor, Economic & Planning Systems, Inc. completed an

analysis of the impacts of the Project on the City's fiscal health over the lifetime of the Project. This analysis, attached as Exhibit 3, measures the net increase in revenues accruing to the City's General Fund from the new development and the net increase in expenses associated with providing additional public and community services like MUNI, police, fire, DPW, public health, 311, 911, elections, etc., as a result of the development. These net impacts are compared against the baseline represented by the current revenues and costs associated with the present use and operations of the Islands, without any new development. As shown in the Fiscal Impacts Study, net annual fiscal revenues accruing to the City are expected to be greater than net annual costs of providing services. On an annual basis, at project build out the net increase over the current baseline is estimated to be approximately \$12.4 million. Over the 20 year timeframe of the Project's cashflow, the General Fund is projected to experience a \$136 million cumulative net positive impact as compared against the baseline. In addition, there are certain tax revenues created by the project that are restricted, non-General Fund revenues that would generate an additional \$2.7 million annually at project build out, and \$25 million in cumulative, restricted, non-General Fund revenues.

#### **IV. Draft Navy Conveyance Agreement**

In August 2010, Mayor Gavin Newsom, House Speaker Nancy Pelosi, and U.S. Secretary of the Navy Ray Mabus endorsed the terms for the conveyance of the property from the Navy to the City, as described in the draft EDC MOA, which is based on the Terms of Economic Development Conveyance Memorandum of Agreement for Transfer of Property with United States Navy ("EDC MOA Terms") that the CAB, TIDA Board and Board of Supervisors endorsed in Spring 2010. The EDC MOA outlines the key economic and other terms associated with transferring the property from the Navy to the Authority. The consideration for the property is based on a guaranteed, fixed initial payment plus additional consideration subject to the project achieving certain financial benchmarks. One very important concept that merits highlighting is the fact that the EDC MOA is structured such that the developer, TICD, will make all payments to the Navy on behalf of the Authority. Furthermore, the City will not be required to fund any of the consideration to the Navy and the City's General Fund is insulated from any obligation to pay on behalf of the Authority. The consideration to the Navy essentially becomes a project land cost and is funded in the same manner as other infrastructure and land preparation costs. Key terms include:

- The Navy will receive guaranteed initial consideration of \$55 million, paid in 10 annual \$5.5 million payments. The DDA will obligate the developer to make these payments on behalf of the Authority.
- The Navy will commit to a schedule for transferring property and, if certain benchmarks are not achieved, adjustments would be made to the payment schedule.
- The Authority will provide the Navy security for the initial consideration – in the event TICD does not make payments on the Authority's behalf – by pledging assignment of its existing rent revenues (existing housing and commercial uses) and certain tax increment financing subordinate to bondholders. In all cases, the General Fund will not fund the Navy payments and the Navy will not be able to seek payment from the General Fund.



- TICD will pay directly to the Navy an additional \$50 million if and when private capital achieves an unleveraged 18% return and 35% of any net revenues if and when private capital achieves an unleveraged 22.5% return.
- The document includes a series of controls, consistent with the Development Plan and Term Sheet for the Redevelopment of Naval Station Treasure Island ("2006 Development Plan") between the Authority and TICD, and the 2010 Update to the 2006 Development Plan, which ensure property is transferred from TICD at fair market value.
- The EDC MOA provides the Navy with certain objection rights if they do not believe the objective standards outlined in the controls have been followed; any Navy objection would be resolved through an expedited dispute resolution process that enables the redevelopment to continue expeditiously.
- Requires funds associated with and generated by the redevelopment project to be used for economic development purposes and/or consideration payable to the Navy for the property.

#### **A. Base Closure Process**

In 1993, the Defense Base Closure and Realignment Commission (BRAC) recommended closure of NSTI. Responsibility for disposal of the surplus property was delegated to the Navy. In 1997, the Navy officially ceased operations at NSTI. Under the BRAC process, the Navy conveyed portions of former NSTI to three separate federal agencies. Approximately 39 acres of land on Yerba Buena Island were conveyed to the United States Coast Guard for their facility on Yerba Buena Island. Approximately 18 acres on YBI were conveyed to the Federal Highways Administration, which was subsequently conveyed to the California Department of Transportation for construction of the new East Span of the San Francisco-Oakland Bay Bridge. And approximately 37 acres on Treasure Island were transferred to the U.S. Department of Labor for the creation of the Treasure Island Job Corps campus, which continues to operate today. The remaining land acres of former NSTI that will be conveyed to TIDA include approximately 368 acres on Treasure Island and 93 acres on Yerba Buena Island, as well as 540 acres of submerged lands (water surrounding both islands).

#### **B. Transfer Discussions Between TIDA and the Navy**

In 2000, TIDA submitted an application to the Navy for an Economic Development Conveyance ("EDC") requesting the 1,001 acres of former NSTI. The 2000 application was based on the land use program and plan in the City's 1996 Draft Reuse Plan approved by the U.S. Department of Housing and Urban Development. The EDC transfer mechanism enables the Navy to convey property directly to the Local Reuse Authority (TIDA) in a flexible manner that supports economic development and job creation for reuse of the former military property. In 2007 TIDA submitted an Amended EDC Application based on the 2006 Development Plan. In the Amended EDC Application, TIDA offered compensation to the Navy valued at \$40 million as well as a profit participation component that provided the Navy 25% of net project revenues consistent with the transaction structure in the 2006 Development Plan. Subsequently, the Navy prepared an appraisal valuation of the property based generally on TIDA's endorsed 2006 Development

Plan that estimated the value of NSTI at \$250 million. TIDA prepared a countervailing appraisal valuation using the same appraisal instructions utilized by the Navy, which estimated the value of the property at approximately \$22 million.

Consistent with TIDA's offer in the Amended EDC Application, TIDA urged the Navy to utilize a financial transaction structure for conveyance of the property that would compensate the Navy consistent with a profit participation component based on the actual performance of the redevelopment project (actual costs, revenues and timing). This is a common real estate transaction structure and the fairest way to bridge the gap between estimations of land value based on projections of costs and revenues over a 15-20 year time period, an inevitably difficult and somewhat arbitrary task. In October 2009, the President signed the 2009 National Defense Authorization Act, which included a provision specifically authorizing the Department of Defense ("DOD") to accept as consideration for the transfer of BRAC properties under an Economic Development Conveyance a profit participation component that would compensate the federal government based on the actual financial performance of the project. With this minor but extremely important change to the statutory authority of the Navy, TIDA and the Navy were able to agree to basic financial terms for the conveyance of Treasure Island, memorialized by a meeting in December 2009 between the Mayor and the Secretary of the Navy.

### **C. EDC MOA Terms**

One very important concept that merits highlighting is the fact that the EDC MOA is structured such that TICD will make all payments to the Navy on behalf of TIDA. That fundamental structure is incorporated into the Financing Plan and will be included in the TICD DDA. Furthermore, the City will not be required to fund any of the consideration to the Navy and the City's General Fund is insulated from any obligation to pay on behalf of TIDA.

***Economic Development Conveyance.*** Specifies that the transfer will be effectuated via a fair market value Economic Development Conveyance.

***Schedule and Transfers.*** The Navy will convey to TIDA the real property consisting of (i) approximately 1,000 acres of upland and submerged lands on Treasure Island and Yerba Buena Island, (ii) all buildings, facilities, roadways and infrastructure, (iii) all utility infrastructure on and off the island (not including utility lines on the property of other state or federal entities), and (iv) all personal property owned by the Navy. The property is anticipated to be conveyed via a Finding of Suitability to Transfer (FOST) after the Navy has remediated the parcels. It is anticipated that the initial closing via the EDC MOA will include approximately 60-65% of the land to be conveyed to TIDA. The EDC MOA will include a schedule that anticipates transfer of the property by set dates based on the Navy's anticipated environmental remediation schedule. The Navy and TIDA will meet annually, at a minimum, to discuss the status of the property conveyance schedule and the Navy's environmental remediation schedule to determine whether, in each party's sole discretion, to amend the conveyance schedule or remediation milestones. TIDA will be required to accept title to the property tendered by the Navy as long as all closing conditions described in the EDC MOA have been satisfied. If the closing conditions have not

been satisfied, TIDA may waive the closing condition or extend the closing for the parcel for a reasonable period of time, but will not be required to accept the property.

**Consideration.** The consideration for the property is based on a guaranteed, fixed initial payment plus additional consideration based on the project achieving certain financial benchmarks.

Initial Consideration. The initial consideration equals \$55 million paid over 10 years in 10 equal annual installments of \$5.5 million, plus a fixed interest rate. The initial payment is made upon the closing of the initial FOSTed parcels of land. The EDC MOA includes certain performance benchmarks relating to Site 12. If the Navy fails to meet the Site 12 benchmarks, the payments to the Navy will be tolled until the benchmarks are satisfied. Upon the benchmarks being satisfied, the fixed annual payments continue on an annual basis adjusted for the amount of time that the payment was tolled.

The TICD DDA will require that TICD make the initial consideration payments to the Navy on behalf of TIDA. TIDA will also provide a promissory note to the Navy in the principal amount of the initial consideration. The promissory note will be secured by (i) an assignment of rents from all interim leasing activity on the Islands, and (ii) to the extent the assigned rent revenues are not sufficient, a pledge of net available tax increment that is subordinate to bonded indebtedness secured by tax increment revenues.

Additional Consideration. In addition to the initial consideration, the Navy will receive a profit participation if the project achieves certain financial benchmarks. Specifically, TICD will be required to pay to the Navy (i) all net cash flow after TICD has achieved an 18% cumulative unleveraged internal rate of return (IRR) up to a maximum of \$50 million and (ii) 35% of all net cash flow after TICD has achieved a cumulative unleveraged 22.5% return. If TICD does not achieve these financial return hurdles, the Navy will not receive the additional consideration.

**Controls.** The 2006 Development Plan outlined a process for TICD to prepare and sell residential and commercial land by either auction to a third party or via appraisal to a TICD affiliate. Specifically, land for 20% of all market rate residential units was required to be sold by auction, land for 20% of the market rate units was required to be sold to a joint venture in which TICD could be no more than 50% of the partnership and the remaining land representing 60% of the market rate units could be transferred to TICD affiliates at a price established by appraisal. The EDC MOA provides more detail on this structure to ensure to the Navy and TIDA that land is appropriately benchmarked and transferred by TICD at fair market values. The controls outlined in the EDC MOA, ultimately to be included in the EDC MOA, are consistent with the 2006 Development Plan and the 2010 Development Plan Update.

The Controls section of the EDC MOA also establishes certain objective standards under which the redevelopment and land sales process must be carried out. These include guidelines for selecting auction parcels, appraisal instructions and a pool of qualified appraisers. In addition, at each major phase of the redevelopment, TIDA and TICD will determine the location of the

auction pads, the qualifications of auction pad bidders, the minimum bid prices for the auction parcels and whether it is appropriate to include a vertical profit participation in the transfer of land to third party builders. The Navy will have the right to object to these major phase decisions if the Navy believes the decisions were not consistent with the objective standards defined in the EDC MOA. This is designed to give the Navy comfort that a fair, arms length transaction process is being conducted through the redevelopment, and provides TICD with a comfort level that as long as it follows the rules and criteria established in the EDC MOA and the TICD DDA that it may move forward with redevelopment without undue delay. In addition, the EDC MOA provides for the Navy receiving regular reports of revenues and expenses, project budgets and audited financial statements.

The EDC MOA includes a provision that limits the fees and exactions as set forth in the TICD DDA and the Development Agreement to protect the Navy's profit participation potential. In addition, the EDC MOA outlines that proceeds from the sale, lease or equivalent use of the property must be used either to pay the Navy its consideration or for economic development purposes. The document provides a list of what qualifies as economic development purposes and broadly describes the standard capital improvements and planning activities associated with redevelopment and consistent with the infrastructure budget that will be included in the TICD DDA. Proceeds from redevelopment not used for the defined economic development purposes may be recouped by the Navy.

***Additional Provisions.*** Additional provisions included in the EDC MOA includes the concept of a dispute resolution procedure for issues related to the controls outlined in the EDC MOA and a general dispute resolution procedure that will govern other significant potential dispute items. The EDC MOA also includes remedies for nonperformance by both parties, as well as specific remedies available to TIDA if the Navy does not convey property within the agreed upon schedule of land transfer included in the EDC MOA. The EDC MOA also provides the Navy with the right to continuing use space at NSTI, subject to TIDA's right to relocate the Navy and charge fair market value rent after seven years.

#### Attachments

- A. Economic Development Conveyance Memorandum of Agreement for the Conveyance of Naval Station Treasure Island
- B. Financing Plan
  - a) Sources and Uses
  - b) Fiscal Impacts Study
- C. Open Space Plan

CONFIDENTIAL DOCUMENT  
REAL PROPERTY NEGOTIATION  
(CA GOVERNMENT CODE SECTION 54956.8)  
Attorney-Client Privilege

The validity of this Agreement is expressly and wholly contingent upon the execution of this Agreement by all parties. In the event that any party hereto refuses or otherwise fails to execute this Agreement, all parties hereto acknowledge and agree that this Agreement shall be a nullity, and the rights and obligations of the respective parties shall remain as they are without this Agreement.

(To be Removed Upon Execution)

**ECONOMIC DEVELOPMENT CONVEYANCE**

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**THE UNITED STATES OF AMERICA**

**AND**

**THE TREASURE ISLAND DEVELOPMENT AUTHORITY**

**FOR THE CONVEYANCE OF**

**THE NAVAL STATION TREASURE ISLAND**

ECONOMIC DEVELOPMENT CONVEYANCE  
MEMORANDUM OF AGREEMENT  
BETWEEN  
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INDEX

ARTICLE 1 DEFINITIONS .....	3
ARTICLE 2 ECONOMIC DEVELOPMENT CONVEYANCE .....	4
ARTICLE 3 CONVEYANCE SCHEDULE AND TRANSFERS .....	4
ARTICLE 4 CONSIDERATION .....	13
ARTICLE 5 CONTROLS .....	20
ARTICLE 6 CONTRACTS AND PERMITS .....	29
ARTICLE 7 EASEMENTS AND OTHER SIMILAR INSTRUMENTS.....	30
ARTICLE 8 CLOSING AND SETTLEMENT.....	32
ARTICLE 9 UTILITIES AGREEMENT.....	35
ARTICLE 10 TIME OF THE ESSENCE AND POSTPONEMENT .....	35
ARTICLE 11 ENVIRONMENTAL REPORTS.....	36
ARTICLE 12 DELIVERY OF THE NAVY REAL PROPERTY DOCUMENTS.....	36
ARTICLE 13 NAVY CARETAKER SITE OFFICE .....	37
ARTICLE 14 NAVY REPRESENTATIONS .....	37
ARTICLE 15 AUTHORITY REPRESENTATIONS .....	38
ARTICLE 16 TITLE AND NAVY COVENANTS.....	38
ARTICLE 17 ENVIRONMENTAL PROVISIONS.....	39
ARTICLE 18 PETROLEUM CORRECTIVE ACTION .....	39
ARTICLE 19 COVENANT AGAINST CONTINGENT FEES.....	40
ARTICLE 20 NOTICES .....	40
ARTICLE 21 PRIOR LIABILITIES.....	41
ARTICLE 22 AUTHORITY'S AVAILABILITY OF FUNDS .....	42
ARTICLE 23 FINALITY OF CONVEYANCE.....	42

1	ARTICLE 24 LIABILITY FOR ENVIRONMENTAL CONTAMINATION .....	42
2	ARTICLE 25 SHORT FORM NOTICE .....	43
3	ARTICLE 26 FURTHER ASSURANCES .....	43
4	ARTICLE 27 DISPUTE RESOLUTION PROCEDURES .....	43
5	ARTICLE 28 SURVIVAL AND BENEFIT .....	47
6	ARTICLE 29 INTERPRETATION.....	48
7	ARTICLE 30 NON-DISCRIMINATION.....	49
8	ARTICLE 31 AVAILABILITY OF FUNDS.....	49
9	ARTICLE 32 MODIFICATION; WAIVERS.....	49
10	ARTICLE 33 REMEDIES FOR NONPERFORMANCE .....	50
11	ARTICLE 34 FAILURE TO INSIST ON COMPLIANCE.....	50
12	ARTICLE 35 RISK OF LOSS.....	50
13	ARTICLE 36 COUNTERPARTS .....	50
14		



**EXHIBITS**

DEFINITIONS.....	EXHIBIT A
DESCRIPTION OF PROPERTY:	
MAP OF PARCEL DESIGNATIONS .....	EXHIBIT B-1
FOST PARCEL .....	EXHIBIT B-2
REMAINDER PARCEL .....	EXHIBIT B-3
SITE 12 DEVELOPMENT PARCEL .....	EXHIBIT B-5
BUILDING 233 DEVELOPMENT PARCEL .....	EXHIBIT B-6
PROPERTY SUBJECT TO LIFOC, EASEMENT, OR OTHER INSTRUMENT PRIOR TO INITIAL CLOSING.....	EXHIBIT B-7
GOVERNMENT PROPERTY DESCRIPTION .....	EXHIBIT C
QUITCLAIM DEEDS:	
FOST PARCEL .....	EXHIBIT D-1
REMAINDER PARCEL .....	EXHIBIT D-2
EXCLUDED PERSONAL PROPERTY .....	EXHIBIT E
MARINA PROPERTY .....	EXHIBIT F
NEPA RECORD OF DECISION .....	EXHIBIT G
BILLS OF SALE:	
BILL OF SALE AND ASSIGNMENT OF INTANGIBLE PROPERTY FOR PERSONAL PROPERTY .....	EXHIBIT H-1
BILL OF SALE FOR UTILITY INFRASTRUCTURE.....	EXHIBIT H-2
EASEMENTS:	
ASSIGNABLE EASEMENTS .....	EXHIBIT I-1
FORM OF ASSIGNMENT OF EASEMENTS.....	EXHIBIT I-2
UTILITY EASEMENTS .....	EXHIBIT I-3
ACCESS EASEMENTS .....	EXHIBIT I-4
NON-ASSIGNABLE AND UNPERFECTED EASEMENTS .....	EXHIBIT I-5
NAVY ACCESS EASEMENTS .....	EXHIBIT I-6
NON-ASSIGNABLE AND UNPERFECTED EASEMENT RELATED TO THE PROVISION OF ELECTRICITY .....	EXHIBIT I-7



1	FOST.....	EXHIBIT J
2		
3	NAVY CARETAKER SITE OFFICE:	
4		
5	CURRENT NAVY CARETAKER SITE OFFICE LOCATION.....	EXHIBIT K-1
6	NAVY OFFICE AGREEMENT.....	EXHIBIT K-2
7	GREAT WHITES LOCATION.....	EXHIBIT K-3
8		
9	ENVIRONMENTAL SUMMARY OUTLINE FOR SEBS APPENDIX.....	EXHIBIT L
10		
11	SHORT FORM NOTICE OF CONVEYANCE.....	EXHIBIT M
12		
13	REPRESENTATIONS:	
14		
15	NAVY .....	EXHIBIT N-1
16	AUTHORITY .....	EXHIBIT N-2
17		
18	FEDERAL FACILITIES SITE REMEDIATION AGREEMENT .....	EXHIBIT O
19		
20	CEQA ENVIRONMENTAL IMPACT REPORT AND CERTIFICATION.....	EXHIBIT P
21		
22	NATIONAL HISTORIC PRESERVATION ACT MOA .....	EXHIBIT Q
23		
24	PROPERTY CONVEYANCE SCHEDULE.....	EXHIBIT R
25		
26	AUCTION BIDDER SELECTION GUIDELINES .....	EXHIBIT S
27	AUCTION BIDDER SELECTION GUIDELINES	
28	FOR COMMERCIAL LOTS.....	EXHIBIT S-2
29		
30	PRELIMINARY TITLE REPORT.....	EXHIBIT T
31		
32	TITLE EXCEPTIONS TO BE REMOVED, RELEASED OR INSURED .....	EXHIBIT U
33		
34	CALCULATION OF PARTIAL CONVEYANCE PAYMENT AMOUNT.....	EXHIBIT V
35		
36	APPRAISAL INSTRUCTIONS:	
37	.....	EXHIBIT X-1
38	.....	EXHIBIT X-2
39	.....	EXHIBIT X-3
40	.....	EXHIBIT X-4
41		
42	QUALIFIED APPRAISER POOL .....	EXHIBIT Y
43		
44	ILLUSTRATIVE LAND USE PLAN .....	EXHIBIT Z
45		
46	ECONOMIC DEVELOPMENT CONVEYANCE APPLICATION.....	EXHIBIT AA

1		
2	FORM OF ACCEPTANCE OF ASSUMED CONTRACTS.....	EXHIBIT BB
3		
4	LEASE FOR OPTION PARCEL .....	EXHIBIT CC
5		
6	EXAMPLE OF IRR CALCULATION .....	EXHIBIT DD
7		
8	FORM OF UTILITIES AGREEMENT.....	EXHIBIT EE
9		
10	GUIDELINES FOR RESIDENTIAL AUCTION LOT SELECTION .....	EXHIBIT FF
11		
12	PRE-APPROVED ARBITERS LIST.....	EXHIBIT GG
13		
14	FORM OF PROMISSORY NOTE.....	EXHIBIT HH
15		
16	FORM OF ASSIGNMENT OF RENTS .....	EXHIBIT II
17		
18	FORM OF SUBORDINATE PLEDGE .....	EXHIBIT JJ
19		
20	EXAMPLE OF PREDEVELOPMENT COSTS CALCULATION.....	EXHIBIT KK
21		
22	LIST OF MASTER LEASES .....	EXHIBIT LL
23		

ECONOMIC DEVELOPMENT CONVEYANCE  
MEMORANDUM OF AGREEMENT  
BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
THE TREASURE ISLAND DEVELOPMENT AUTHORITY  
FOR THE CONVEYANCE OF  
THE NAVAL STATION TREASURE ISLAND

This Agreement (hereinafter referred to as the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_ 2011 (the "Effective Date"), between the UNITED STATES OF AMERICA, acting by and through the Department of the Navy (the "Navy"), and the TREASURE ISLAND DEVELOPMENT AUTHORITY (the "Authority"), recognized as the Local Redevelopment Authority by the Office of Economic Adjustment on behalf of the Secretary of Defense with regard to the disposition and conveyance of portions of Naval Station Treasure Island, San Francisco, California. The Navy and the Authority are each sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

**WHEREAS:**

1. In 1993, the Defense Base Closure and Realignment Commission recommended the closure of Naval Station Treasure Island ("Treasure Island") located within the City and County of San Francisco, California (the "City") and consisting of approximately [one thousand and forty-one (1,041) / one thousand and seventy-five (1,075)][to be confirmed by Navy mapping dept.] acres of real property, together with the buildings, improvements and related and other personal property located thereon and all rights, easements and appurtenances thereto.

2. In accordance with the Defense Base Closure and Realignment Act of 1990, as amended, the authority of the Administrator of General Services under the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. § 484, with respect to the disposal of surplus real property at installations closing thereunder, was delegated to the Secretary of Defense and further delegated to the Secretary of the Navy.

3. (a) Pursuant to the power and authority provided by §2905(b)(4) of the Defense Base Closure and Realignment Act of 1990, 10 U.S.C. § 2687 note, as amended, and the implementing regulations of the Department of Defense (32 C.F.R. Part 175), the Secretary of the Navy is authorized to convey surplus property at a closing installation to the Local Redevelopment Authority for economic development purposes. By its "EDC Application and Business Plan for Naval Station Treasure Island" dated June 19, 2000, as amended on July 1, 2003, and amended and restated in its entirety on July 23, 2007, and as further amended by its application dated \_\_\_\_\_, 2010, the Authority applied for an Economic Development Conveyance ("EDC") of approximately [one thousand and thirty-three (1,033) / nine hundred and ninety-six (996)] [to be confirmed by Navy mapping dept.] acres of Treasure Island together with existing Navy owned off-site utilities serving Treasure Island (the "EDC

1 **Application**”), to be used and redeveloped in accordance with the “Draft Reuse Plan for Naval  
2 Station Treasure Island” (“**Reuse Plan**”) as endorsed by the City Planning Commission and the  
3 City’s Board of Supervisors in July 1996 and approved by the United States Department of  
4 Housing and Urban Development on November 26, 1996, as shown on the “**Illustrative Land**  
5 **Use Plan**” in the Authority’s EDC Application.

6  
7 (b) The Illustrative Land Use Plan reflects refinements to the Reuse Plan  
8 described in the Development Plan and Term Sheet for the Redevelopment of Former Naval  
9 Station Treasure Island endorsed by the Authority’s Board of Directors in October 2006 and the  
10 City’s Board of Supervisors in December 2006, as updated by the Update to Development Plan  
11 and Term Sheet for the Redevelopment of Former Naval Station Treasure Island endorsed by the  
12 Authority’s Board of Directors on April 7, 2010 and the City’s Board of Supervisors on May 18,  
13 2010. The Illustrative Land Use Plan provides for a new development program consisting of up  
14 to 8,000 residential units, approximately 500 hotel rooms, and commercial space of  
15 approximately 511,000 square feet, among other things.

16  
17 (c) The Navy has approved the Authority’s EDC Application on \_\_\_\_\_,  
18 2010, attached hereto as Exhibit AA for approximately \_\_\_\_\_ acres of Treasure Island  
19 and Yerba Buena Island.

20  
21 (d) The consideration for conveyance of the Navy Property, as set forth  
22 herein, has been structured to achieve an amount at least equal to the fair market value of the  
23 Navy Property.

24  
25 4. In accordance with the provisions of the Community Environmental Response  
26 Facilitation Act, the Navy prepared Environmental Baseline Surveys (“EBSs”) for the Navy Real  
27 Property, copies of which have been provided to the Authority. Subsequently, the Navy  
28 prepared a Supplemental Environmental Baseline Survey (“SEBS”) for the Navy Real Property  
29 dated \_\_\_\_\_, a copy of which has been provided to the Authority. In accordance with *DOD*  
30 *Policy on the Environmental Review Process to Reach a Finding of Suitability to Transfer*  
31 *(“FOST”)* for Property Where Release or Disposal Has Occurred, the Navy prepared FOSTs  
32 dated February 15, 2006, March 22, 2006, and \_\_\_\_\_, 20\_\_\_\_, attached hereto as Exhibit  
33 J, and the “Environmental Summary Outline for SEBS Appendix, Naval Station Treasure Island”  
34 dated \_\_\_\_\_, attached hereto as Exhibit L.

35  
36 5. For purposes of this Agreement, the Parties shall treat the Navy Real Property as  
37 two (2) separate parcels (that may be further subdivided into sub-parcels). Said parcels are  
38 identified as the “**FOST Parcel**”, as described on Exhibit B-2, and the “**Remainder Parcel**” as  
39 described on Exhibit B-3 (collectively, the “**Parcels**”, and each a “**Parcel**”, as shown on the map  
40 of parcel designations attached hereto as Exhibit B-1).

41  
42 6. In accordance with the provisions of the National Environmental Policy Act  
43 (“**NEPA**”) of 1969, as amended, the Navy prepared an Environmental Impact Statement (“**EIS**”)  
44 for the disposal and reuse of the Navy Real Property. A Record of Decision (“**NEPA ROD**”)  
45 regarding the disposal and reuse of the Navy Real Property was issued on the 26th day of  
46 October, 2005 and is attached to this Agreement as Exhibit G.

1  
2 7. In accordance with the provisions of the California Environmental Quality Act  
3 ("CEQA"), as amended, the Authority and the City, as co-lead agencies, have prepared a  
4 project-level Environmental Impact Report ("EIR") for the Illustrative Land Use Plan and  
5 related documents and actions. The Authority certified the EIR as complete and the Planning  
6 Commission certified the EIR as complete on \_\_\_\_\_, 20\_\_\_\_ (collectively, the  
7 "Certification"). The Certification resolutions are attached hereto as Exhibit P.

8  
9 8. In accordance with the provisions of the National Historic Preservation Act, the  
10 Navy determined that the disposal of the Navy Real Property, as hereinafter defined, will have an  
11 effect upon those portions of the Navy Real Property that are listed and eligible for listing in the  
12 National Register of Historic Places. A Memorandum of Agreement between the Department of  
13 the Navy and the California State Historic Preservation Officer ("SHPO") was executed on the  
14 28<sup>th</sup> day of May, 2003, and sets forth in full all obligations of the signatories under the National  
15 Historic Preservation Act and implementing regulations, and is attached hereto as Exhibit Q.

16  
17 9. In accordance with the provisions of that certain Base Caretaker Cooperative  
18 Agreement first dated March 12, 1997 and as further modified ("Caretaker Agreement") and  
19 those certain Master Leases by and between the Authority and the Navy described on Exhibit  
20 LL, the physical condition of the Navy Real Property has been maintained by the Authority. The  
21 physical condition of the Navy Real Property is subject to reasonable wear and may have been  
22 altered by the Authority under the terms of the Caretaker Agreement and the Master Leases,  
23 and/or the Navy where remedial activities have been required.

24  
25 10. The Authority shall cause the DDA to incorporate all applicable terms of this  
26 Agreement substantially in the same form as they appear herein.

## 27 AGREEMENTS

28  
29 **NOW, THEREFORE**, in consideration of the foregoing and the respective  
30 representations, agreements, covenants and conditions herein contained, and other good and  
31 valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Navy  
32 and the Authority agree as follows:

## 33 **ARTICLE 1**

### 34 **DEFINITIONS**

35  
36 1.1 The definitions are attached hereto as Exhibit A and are hereby incorporated by  
37 reference as if fully set forth herein.  
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## ARTICLE 2 ECONOMIC DEVELOPMENT CONVEYANCE

2.1 Pursuant to §2905(b)(4) of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. § 2687 note), as amended, and 32 C.F.R. 174, the Navy agrees to transfer and convey all of the Navy's right, title, and interest in the Navy Property to the Authority under a fair market value economic development conveyance, and the Authority agrees to acquire such Navy Property in consideration of the covenants, conditions and restrictions contained herein and other good and valuable consideration, subject to the terms, conditions and general provisions set forth in this Agreement.

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## ARTICLE 3 CONVEYANCE SCHEDULE AND TRANSFERS

3.1 Property to be Conveyed. The Navy shall convey to the Authority, and the Authority shall accept from the Navy, subject to the terms, covenants and conditions hereinafter set forth, all of the Navy's right, title, and interest in the following property:

3.1.1 The real property consisting of approximately 1996 acres of uplands, tidelands and submerged lands located within the bounds of the former Naval Station Treasure Island, as more particularly described and delineated in Exhibit B-2 and Exhibit B-3, attached hereto, which shall include, but not be limited to, any right, title or interest the Navy may have in the following (collectively referred to herein as the "Navy Real Property"):

3.1.1.1 All buildings, facilities, roadways and other infrastructure including the storm drainage systems and the utility system infrastructure, and any other improvements thereon (including all replacements and additions thereto between the date of this Agreement and the date of conveyance of all the Navy Real Property to the Authority).

3.1.1.2 The Easements, licenses, rights of way, or other similar instruments as described in Article 7.

3.1.1.3 The hereditaments and tenements in and/or to the Navy Real Property and reversions, remainders, issues, profits, privileges and other rights belonging or related thereto.

3.1.1.4 All rights to minerals, gas, oil, water and similar rights.

3.1.2 The Utility Infrastructure consisting of all utilities and related support infrastructure located on and off the Navy Real Property that serve the Navy Real Property such as electrical, water, sewer, gas, storm drainage and telecommunications lines (including all replacements and additions thereto between the date of this Agreement and the date of conveyance of all the Navy Real Property to the Authority), as more particularly described on Exhibit H-2 attached hereto.

3.1.3 The Navy Personal Property consisting of the Navy's right, title, and interest in all personal property, except for (i) items identified in Article 13 relating to the Navy Caretaker Office, and (ii) property under the cognizance of the Navy Historical Center that is identified on Exhibit E, attached hereto (collectively, the "Excluded Personal Property"), located on or used in connection with the ownership, use, or operation of the specific portion of the Navy Real Property to be transferred to the Authority at each Closing, substantially in the form of and pursuant to the terms and conditions of the Bill of Sale as more particularly described in Exhibit H-1, attached hereto. The Navy shall retain responsibility for all Excluded Personal Property under the cognizance of the Navy Historical Center and/or the Navy Caretaker Office. Unless the Navy and the Authority enter into a separate agreement regarding the Excluded Personal Property under the cognizance of the Navy Historical Center, Navy shall remove all such Excluded Personal Property from the Navy Real Property within 24 months after notice from the Authority requesting removal. The Authority shall have the right to relocate the Excluded Personal Property related to the Navy Historical Center prior to its removal so long as such artifacts are moved with appropriate care and with Navy approval.

3.2 Sequence of Conveyances. The Navy shall convey the Navy Real Property by Quitclaim Deed to the Authority, and the Authority shall accept, in Multiple Conveyances in accordance with the Conveyance Schedule attached hereto as Exhibit R, such portion of the Navy Real Property for which the Closing Conditions set forth in Section 3.7 have been satisfied or waived, subject to the following requirements:

3.2.1 The Navy Real Property shall be conveyed and accepted within sixty (60) days after the Closing Conditions have been satisfied for the portion of the Navy Real Property subject to the applicable conveyance.

3.2.2 The Parties agree to meet at such times as requested by a Party, but no less than annually, to discuss the status of the Conveyance Schedule. Prior to each such meeting, the Authority shall deliver to the Navy a general phasing schedule that describes the anticipated schedule of development on the Navy Real Property for the next twenty-four (24) months. During such meeting, the Parties may mutually agree, in each Party's sole and absolute discretion, to amend the Conveyance Schedule.

### 3.3 Conveyance Process.

3.3.1 FOST Parcel. On the Initial Closing, the Navy shall convey to the Authority, and the Authority shall accept, the portion of the Navy Real Property that is more particularly described and delineated as the FOST Parcel on Exhibit B-2, attached hereto, in accordance with the process provided herein, so long as the Closing Conditions for the transfer of the FOST Parcel have been satisfied.

3.3.2 Remainder Parcel. Upon satisfaction of the Closing Conditions for the transfer of the Remainder Parcel or applicable portions thereof, the Navy shall convey to the Authority, and the Authority shall accept, the portions of the Navy Real Property that are more particularly described and delineated as the Remainder Parcel on Exhibit B-3, attached hereto,



1 or portions of such Remainder Parcel, in accordance with the process otherwise provided  
2 herein.

### 3.4 FOST Conveyances.

3.4.1 The Navy shall convey the Navy Real Property to the Authority by  
Quitclaim Deed(s) with all required CERCLA warranties and covenants after a FOST is  
executed with respect to the applicable portion of the Navy Real Property. Unless otherwise  
mutually agreed by the Parties, the Navy shall provide to the Authority for review and  
comment copies of all draft FOSTs and the contents of any proposed land use covenants as  
they become available, provided, however, that the Navy shall not execute any final FOST or  
execute or record any land use covenants related to the Navy Real Property for at least 45 days  
after the applicable draft FOST or land use covenant is provided to the Authority. The Navy  
shall promptly provide updates or revisions of such Draft FOSTs or land use covenants to the  
Authority as soon as any updates are available to the Navy. Unless otherwise mutually agreed  
by the Parties, the revised draft final FOST or land use covenant, as the case may be, must be  
provided to the Authority at least fifteen (15) days prior to the Navy's execution or recordation  
of the applicable final FOST or land use covenant.

3.4.2 The FOST(s) shall summarize how applicable requirements and  
notifications related to hazardous substances, petroleum products and other regulated materials  
have been satisfied. The FOST(s) may prescribe land use restrictions or covenants.

### 3.5 Title to Property.

3.5.1 Conveyance by Quitclaim Deed. At the Initial Closing, the Navy shall  
convey to the Authority all of its right, title and interest in and to the FOST Parcel by duly  
executed and acknowledged Quitclaim Deed substantially in the form attached hereto as  
Exhibit D-1. At each subsequent Closing, the Navy shall convey to the Authority all of its  
right, title and interest in and to the applicable portion of the Remainder Parcel by duly  
executed and acknowledged Quitclaim Deed substantially in the form attached hereto as  
Exhibit D-2.

### 3.5.2 Condition of Title.

3.5.2.1 Attached hereto as Exhibit T is a preliminary title report that  
identifies the liens, exceptions to title and encumbrances recorded against the Navy Real  
Property as of the Effective Date of this Agreement. Any title insurance that may be desired by  
the Authority shall be procured at its sole cost and expense. The Navy shall cooperate with the  
Authority or its authorized agent and shall permit examination and inspection of any documents  
relating to the title of the Navy Real Property as it may have available. While, except as set forth  
in Section 3.5.2.2, the Navy is not obligated to clear any of the title exceptions listed on Exhibit  
U, the Navy agrees to assist the Authority, as appropriate, to have the title exceptions listed on  
Exhibit U attached hereto, and any subsequently discovered title exceptions that appear to be in  
error or are of concern to the Authority, removed, released or insured over.



3.5.2.2 From the Effective Date of this Agreement through the Initial Closing and any subsequent Closings, the Navy shall not permit, agree to sell, encumber or grant any interest in the Navy Real Property or any part thereof in any form or manner whatsoever, or otherwise perform or permit any act that will diminish or otherwise affect the Authority's interest under this Agreement or to the Navy Real Property, or which will prevent the Navy's full performance of its obligations hereunder, without the written consent of the Authority, except environmental restrictions or land use covenants consistent with Section 3.4.2 as may be designated in the CERCLA Record of Decision, an approved Corrective Action Plan or the FOST.

3.6 Non-Assignable and Unperfected Easements. Attached hereto as Exhibit I-5 is a list of the easements, leases, licenses and encroachment permits that are necessary for the operation, maintenance or improvement of the Navy Real Property and are either not assignable (the "**Non-Assignable Easements**") or not validly held by the Navy (the "**Unperfected Easements**"). The Navy shall cooperate with the Authority or its authorized agent and shall permit examination and inspection of any documents relating to the Non-Assignable Easements and Unperfected Easements as it may have available. Navy agrees to assist the Authority, as appropriate, to obtain the consents or replacement agreements necessary to transfer the Navy's rights under the Non-Assignable Easements and to assist the Authority as appropriate to obtain the easements, leases, licenses or encroachment permits necessary for perfecting and assigning the Unperfected Easements.

3.7 Closing Conditions. The Authority shall be obligated to accept title to any portion of the Navy Real Property tendered to the Authority within sixty (60) days after such portion of the Navy Real Property is tendered if, at the time of the tender, all of the following conditions are satisfied, or waived by the Authority in its sole discretion (together the "**Closing Conditions**"):

3.7.1 With respect to the Initial Closing for the FOST Parcel:

3.7.1.1 One or more FOST(s) have been executed covering the entirety of the FOST Parcel depicted on Exhibit B-2, attached hereto and the substance of any environmental restrictions or land use covenants whether contained in such FOST(s) or executed or recorded separately affecting all or any portion of the FOST Parcel does not prohibit the timely implementation of the Reuse Plan.

3.7.1.2 Building 233 located on the Building 233 Development Parcel described on Exhibit B-6 has been demolished and (i) the CDPH and DTSC have approved a Final Status Survey Work Plan for Building 233 sufficient to enable CDPH to issue a Free Release Letter, and (ii) the CDPH and DTSC have approved the completed Final Status Survey Report ("**FSSR**") submitted by the Navy and written assurance has been received from the appropriate Regulatory Authority or Authorities that no land use restrictions or covenants will be imposed on the Building 233 Development Parcel that would prohibit timely development consistent with the Illustrative Land Use Plan.

3.7.1.3 A Record of Decision has been issued for Site 21 described on Exhibit B-1 and any land use restriction or covenants would allow for residential use on all habitable floors of a building to be constructed on Site 21.

3.7.1.4 An Explanation of Significant Differences has been issued by the Navy and approved by DTSC for Site 33. The remedial action for Site 33 and any resulting land use restrictions or covenants would allow residential use on all habitable floors of a building to be constructed on Site 33, and a Remedial Action Completion Report ("RACR") has been approved by DTSC for Site 33.

3.7.1.5 The Navy and the Authority are not in material default of any of their material obligations hereunder related to the transfer of the FOST Parcel pursuant to this Agreement, unless waived by the Party not in material default.

3.7.1.6 The form and content of the Quitclaim Deed transferring the FOST Parcel is consistent with Section 3.5 and the applicable FOST.

3.7.1.7 The Navy has delivered into escrow the Navy Closing Documents described in Section 8.2 below.

3.7.1.8 All third party consents for the assignment or the replacement of any Non-Assignable Easements related to the provision of electricity to Treasure Island and all easements, leases, licenses and/or encroachment permits necessary to perfect and assign the Unperfected Easements related to the provision of electricity to Treasure Island have been obtained. The Non-Assignable and Unperfected Easements related to the provision of electricity to Treasure Island are shown in Exhibit I-7.

3.7.1.9 At the Initial Closing: (i) the physical condition of the FOST Parcel shall be substantially the same as on the Effective Date of this Agreement, reasonable wear and tear, activities under the Caretaker Agreement, master leases, and Navy's remedial activities excepted, (ii) there shall be no litigation or administrative agency or other governmental proceeding pending, that materially and adversely affects the proposed redevelopment of the FOST Parcel, (iii) the environmental condition (including without limitation the presence, nature, extent and concentration of Hazardous Substances thereon) of any portions of the FOST Parcel covered by a FOST issued by the Navy has not materially worsened after the Effective Date of this Agreement, (iv) no Regulatory Authority has asserted the need for additional screening, investigation, remediation or restrictions related to radiological contamination (other than employee health and safety plan screening to be conducted by a contractor prior to or during construction) beyond those set forth in the FOST issued for any portions of the FOST Parcel; and (v) to the extent that a Record of Decision or FOST exists for a particular portion of the FOST Parcel on the Effective Date of this Agreement, such Record of Decision or FOST has not been modified or changed unless mutually agreed upon (including changing through an Explanation of Significant Differences, except for Site 31), and no additional conditions or restrictions not identified in the existing Record of Decision or FOST have been added after the Effective Date of this Agreement and prior to the Initial Closing.

1  
2 3.7.1.10 The FOST Parcel is not subject to any liens, exceptions and  
3 encumbrances other than the following: (i) the lien of real property taxes not yet due and  
4 payable, (ii) the exceptions to title described in the preliminary title report attached hereto as  
5 Exhibit T, (iii) exceptions to title approved by the Authority in accordance with Section 3.5.2 of  
6 this Agreement, (iv) environmental restrictions or land use covenants consistent with Section 3.4  
7 that the Navy may record against the Navy Real Property in accordance with Section 3.5.2, and  
8 (v) non-material liens, exceptions or encumbrances that do not impair the value of the Navy Real  
9 Property or the ability to develop the Project.

10  
11 3.7.1.11 All Regulatory Authority approvals have been obtained for the  
12 FOST Parcel relating to the investigation and environmental response for underground and  
13 above-ground petroleum storage tanks, and any releases of petroleum, petroleum derivatives,  
14 petroleum fractions, or any chemicals, compounds or products that result from their degradation  
15 in accordance with Article 18.

16  
17 3.7.2 With respect to any subsequent Closing for a portion of the Remainder  
18 Parcel:

19  
20 3.7.2.1 A FOST has been executed for such portion of the Remainder  
21 Parcel and the substance of any environmental restrictions or land use covenants whether  
22 contained in such FOST(s) or recorded separately against the applicable portion of the  
23 Remainder Parcel does not prohibit the timely implementation of the Reuse Plan.

24  
25 3.7.2.2 The Navy and the Authority are not in material default of any  
26 of their material obligations hereunder related to the transfer of such portion of the Remainder  
27 Parcel pursuant to this Agreement, unless waived by the Party not in material default.

28  
29 3.7.2.3 The form and content of the Quitclaim Deed transferring such  
30 portion of the Remainder Parcel is consistent with Section 3.5 and the applicable FOST.

31  
32 3.7.2.4 The Navy has delivered into escrow the Navy Documents  
33 described in Section 8.2 below.

34  
35 3.7.2.5 The physical condition of such portion of the Remainder Parcel  
36 shall be substantially the same on the applicable Closing date as on the Effective Date of this  
37 Agreement, reasonable wear and tear, activities under the Caretaker Agreement, master leases  
38 and Navy's remedial activities excepted, and, as of the applicable Closing date, there shall be no  
39 litigation or administrative agency or other governmental proceeding pending, that materially  
40 and adversely affects the proposed redevelopment of such portion of the Remainder Parcel, and  
41 no Regulatory Authority has asserted the need for additional screening, investigation,  
42 remediation or restrictions beyond those set forth in the FOST issued for such portion of the  
43 Remainder Parcel.

44  
45 3.7.2.6 The Navy has not permitted, agreed to sell, sold, encumbered,  
46 or granted any interest in such portion of the Remainder Parcel in violation of Section 3.5.2.2.

1  
2 3.7.2.7 All Regulatory Authority approvals have been obtained for the  
3 Remainder Parcel relating to the investigation and environmental response for underground and  
4 above-ground petroleum storage tanks, and any releases of petroleum, petroleum derivatives,  
5 petroleum fractions, or any chemicals, compounds or products that result from their degradation  
6 in accordance with Article 18.  
7

8 3.8 Failure to Satisfy Closing Conditions.  
9

10 3.8.1 If any Closing Conditions described in Section 3.7.1 relating to the  
11 Initial Closing are not satisfied prior to or on the date that the Navy is required to convey the  
12 FOST Parcel to the Authority in accordance with the Conveyance Schedule, as may be amended  
13 by the Parties, then the Authority shall have the right in its sole and absolute discretion to (i)  
14 waive in writing the Closing Condition in question as to all or any portion of the FOST Parcel  
15 and proceed with Closing, or (ii) extend the Closing for the FOST Parcel for a reasonable period  
16 of time up to four (4) years as specified by the Authority to allow all of the Closing Conditions  
17 applicable to the FOST Parcel to be satisfied and, if applicable, to complete early transfer or  
18 Lease in Furtherance of Conveyance ("LIFOC") negotiations with the Navy in accordance with  
19 Section 3.11 or Section 3.12 below.  
20

21 3.8.2 If any Closing Conditions described in Section 3.7.2 relating to a  
22 subsequent Closing for any portion of the Remainder Parcel are not satisfied prior to or on the  
23 date that the Navy is required to convey such portion of the Remainder Parcel to the Authority in  
24 accordance with the Conveyance Schedule, as may be amended by the Parties, then the Authority  
25 shall have the right in its sole and absolute discretion to (i) waive in writing the Closing  
26 Condition in question and proceed with Closing, or (ii) extend the Closing for such portion of the  
27 Remainder Parcel for a reasonable period of time up to four (4) years (except as otherwise  
28 provided for Site 12 in Section 4.2.2) as specified by the Authority to allow all of the Closing  
29 Conditions applicable to such portion of the Remainder Parcel to be satisfied and, if applicable,  
30 to complete early transfer or LIFOC negotiations with the Navy in accordance with Section 3.11  
31 or Section 3.12 below.  
32

33 3.8.3 If a dispute arises between the Parties regarding whether a Closing  
34 Condition has been satisfied, either Party may invoke the dispute resolution procedure described  
35 in Article 27.  
36

37 3.8.4 If any Closing Conditions described in Section 3.7.1 and/or 3.7.2 are not  
38 satisfied within four (4) years after the date the Navy was required to convey the applicable  
39 Parcel to the Authority in accordance with the Conveyance Schedule, as may be amended by the  
40 Parties (except as otherwise provided for Site 12 in Section 4.2.2), and such failure to satisfy a  
41 Closing Condition is not caused by a Navy breach of an obligation under this Agreement, then  
42 the Authority shall have sixty (60) days from receipt of a written notice from the Navy to elect to  
43 waive in writing the Closing Condition in question and proceed with Closing. If after 60 days  
44 the Authority has not chosen to waive in writing the Closing Condition then, this Agreement  
45 shall terminate as to the affected Parcel(s). If this Agreement terminates as to the affected  
46 Parcel(s), the Navy shall have the right to transfer or convey such Parcel(s) according to

1 applicable law and in accordance with Section 3.8.6 and 3.8.7, provided, however if this  
2 Agreement terminates as to all of the Navy Real Property prior to the Initial Closing, then the  
3 Navy shall have the right to transfer or convey such Parcel(s) according to applicable law and  
4 without complying with Section 3.8.6 or Section 3.8.7.

5  
6 3.8.5 If the Authority does not accept a Parcel for which the Closing  
7 Conditions have been satisfied or waived within sixty (60) days after the Navy's tender of the  
8 Parcel, subject to Excusable Delay, then the Authority shall be in default and the Navy shall have  
9 the right, in its sole discretion, and as its sole and exclusive remedy, to transfer or convey the  
10 Parcel in accordance with applicable law.

11  
12 3.8.6 The Navy agrees that concurrent with the transfer or conveyance of the  
13 FOST Parcel, or any portion thereof, to a third party in accordance with Section 3.8.4 the Navy  
14 shall notify the third party of the restrictions under the Reuse Plan as such Reuse Plan may be  
15 modified by the Authority to address the failure to satisfy the Closing Condition that gave rise to  
16 the Navy transfer or conveyance of such FOST Parcel, or portion thereof, if any, and concurrent  
17 with any transfer or conveyance of the Remainder Parcel, or a portion thereof, to a third party in  
18 accordance with Section 3.8.4 the Navy shall notify the third party of the restrictions under the  
19 Illustrative Land Use Plan as such version of the Illustrative Land Use Plan may be modified by  
20 the Authority to address the failure to satisfy the Closing Condition that gave rise to the Navy  
21 transfer or conveyance of such Remainder Parcel, or portion thereof, if any.

22  
23 3.8.7 The Navy shall not transfer or convey all or any portion of the Navy  
24 Real Property in accordance with Section 3.8.4 to a state or federal agency, or any other entity  
25 that would be exempt from complying with land use restrictions, including restrictions arising  
26 under the Reuse Plan, the Illustrative Land Use Plan, the Treasure Island/Yerba Buena Island  
27 Redevelopment Plan, the City's General Plan or the City's Zoning Map (an "Exempt  
28 Transferee"), without first granting the Authority the option (the "Authority Option") to lease  
29 the portion of the Navy Real Property that the Navy proposes to transfer or convey to the  
30 Exempt Transferee (the "Option Property"). At least sixty (60) days prior to initiating the  
31 process for transfer or conveyance of all or any portion of the Option Property to an Exempt  
32 Transferee, the Navy shall notify the Authority in writing (the "Option Notice") of (i) the  
33 description of the Option Property subject to the Option Notice, and (ii) the proposed method  
34 of transfer or conveyance, and (iii) if known, the identity of the proposed Exempt Transferee  
35 and the Exempt Transferee's proposed use of the Option Property. The Authority shall have  
36 forty-five (45) days after receipt of the Option Notice to exercise the Authority Option by  
37 delivering a written exercise notice to the Navy. If the Authority exercises the Authority  
38 Option, the Parties shall promptly execute a lease in substantially the form attached hereto as  
39 Exhibit. The form of lease will be a LIFO or master lease similar to the existing master  
40 leases and will include the following provisions: the Authority will not pay rent and the term  
41 will expire on the earlier of 50 years after lease commencement or such time as the Navy  
42 satisfies the applicable Closing Condition allowing for conveyance of the Option Property to  
43 the Authority.

44  
45 3.9 Quitclaim Deeds. The Navy shall convey all of its right, title, and interest in and  
46 to the Navy Real Property to the Authority, and the Authority agrees to accept conveyance of the



1 Navy Real Property "as is" and "where is" by good and sufficient Quitclaim Deeds in  
2 accordance with this Agreement, by separate conveyance and Closing. Acceptance of the Navy  
3 Real Property by the Authority shall be by execution of the Authority's acceptance statement on  
4 the Quitclaim Deeds. The Navy shall prepare plats and legal descriptions of areas that are  
5 subject to environmental restrictions and covenants at its own expense and provide such plats  
6 and legal descriptions to the Authority for review. The Authority shall prepare draft plats and  
7 legal descriptions of the metes and bounds of the outer boundary of the Naval Station Treasure  
8 Island and the Parcels of Navy Real Property at its own expense and provide such plats and legal  
9 descriptions to the Navy for review. The Parties shall work cooperatively to ensure that plats  
10 and legal descriptions are correct and agreed to by each Party. The Authority shall be  
11 responsible for recording Quitclaim Deeds at its own expense. The Parties shall cooperate in  
12 executing and delivering corrective deeds necessary to convey omitted land intended to be  
13 included in the Navy Real Property and to correct any erroneous description of the Navy Real  
14 Property.

15  
16 3.10 Sub-parcels. Sub-parcelization of any Parcel may be considered and a sub-parcel  
17 may be conveyed as mutually agreed to by the Parties.

18  
19 3.11 Early Transfer Negotiations. At any time, the Parties may enter into early transfer  
20 negotiations for the conveyance of any Parcel or agreed upon sub-parcel with a covenant deferral  
21 pursuant to Section 120(h)(3)(c) of CERCLA and the terms of a mutually acceptable Early  
22 Transfer Cooperative Agreement that has been approved by the Navy, the Authority's Board of  
23 Directors and, if required, the City's Board of Supervisors and Mayor, each in their sole and  
24 absolute discretion.

25  
26 3.12 Lease in Furtherance of Conveyance. At any time, the Parties may enter into  
27 negotiations for a LIFOC for any portion of the Navy Real Property on terms mutually  
28 acceptable to the Parties, subject to approval by (1) the Authority's Board of Directors and, if  
29 required, the City's Board of Supervisors and Mayor, and (2) the Secretary of the Navy or his/her  
30 designee as appropriate, each in their sole and absolute discretion. The Navy and the Authority  
31 will enter into a LIFOC, easement or other instrument acceptable to the Authority that allows for  
32 the construction of roads, utilities and other infrastructure on the properties described in Exhibit  
33 B-7, attached hereto, and the Navy shall deliver into escrow an executed original of such LIFOC,  
34 easement or other instrument.

35  
36 3.13 Marina Property. The Marina Property depicted in Exhibit F will be  
37 conveyed to the Authority pursuant to this Agreement, but will not be conveyed by the Authority  
38 to the Developer or be subject to the terms and conditions of the DDA. Accordingly, the  
39 revenues received by the Authority from the Marina Property shall not be subject to Article 4  
40 ("Consideration") and Article 5 ("Controls"), other than Section 5.13. Revenues received by the  
41 Authority from the Marina Property shall be used by the Authority to fund the Authority's costs  
42 of administering the closure and reuse of Treasure Island and implementing the Reuse Plan, and  
43 shall directly reduce the Authority Costs Payment. An annual accounting of Marina Property  
44 revenues shall be provided to the Navy in accordance with Section 4.3.5.2 hereof.  
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## ARTICLE 4 CONSIDERATION

4.1 Consideration. In consideration for the conveyance of the Navy Real Property, the Authority shall pay to the Navy (i) an initial purchase price of Fifty Five Million Dollars (\$55,000,000) (the "**Initial Consideration**"), payable over a term of ten (10) years (as such term may be extended pursuant to Section 4.2.2 below) (the "**Initial Consideration Term**") and (ii) Additional Consideration based on Net Cash Flow generated from the Navy Property. Payments of the Initial Consideration and the Additional Consideration may be made directly by the Developer on behalf of the Authority to the Navy. All payments due hereunder shall be payable to the U.S. Treasury and sent to BRAC Program Management Office West, 1455 Frazee Road, Suite 900, San Diego, CA 92108 or to any new or substitute address specified, in writing in accordance with the notice procedure set forth herein.

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### 4.2 Initial Consideration.

4.2.1 Initial Closing. Commencing on the Initial Closing, the Authority shall pay the Initial Consideration in U.S. Dollars in ten equal annual installments of Five Million Five Hundred Thousand Dollars (\$5,500,000) (each, an "**Installment Payment**") plus interest if and when due. The first payment of Five Million Five Hundred Thousand Dollars (\$5,500,000) shall be paid at the Initial Closing. Each subsequent Installment Payment shall be made on the Anniversary Date of the Initial Closing and shall consist of (i) the amount of the Installment Payment then due, plus (ii) the Interest Rate multiplied by the amount of the Initial Consideration that had not yet been paid as of the beginning of the prior year (i.e., the Initial Consideration minus the total of Installment Payments that were actually paid through the prior year). The Parties also intend that so long as all of the Navy Real Property has been conveyed, all of the Initial Consideration and applicable interest will have become due and payable by the expiration of the Initial Consideration Term, subject to the credit against Initial Consideration pursuant to Section 4.2.5 hereof. Notwithstanding the foregoing, if at any time Navy conveys any Parcel to a third party to the extent permitted under Section 3.8.4 hereof, the total amount of the Initial Consideration shall be reduced by the amount of consideration received by the Navy from the sale or transfer of such Parcel up to the amount of the Initial Consideration, and any interest payable thereon shall be on the reduced amount of Initial Consideration. Authority shall also be entitled to a credit against any future Installment Payment (and if insufficient Installment Payments remain to fully use the credit, against future payments of Additional Consideration) equal to the interest paid by Authority to Navy from the Initial Closing through the date of the third-party sale calculated on the amount of consideration received by the Navy from the sale or transfer of the applicable Parcel. If at the time of the third party sale, one or more Installment Payments remain due, the Installment Payments shall continue until the Navy has been paid an amount equal to the Initial Consideration less the amount of the third party sale. If the conveyance to a third party occurs after Authority has already paid the Navy Installment Payments in an amount that equals more than the Initial Consideration less amounts received by the Navy from the third party sale, then no further Installment Payments shall be due, and Authority shall be entitled to credit the amount of the Authority's overpayment against future payments of Additional Consideration that may become due under Section 4.3 hereof. Without limiting the foregoing, if this Agreement terminates as to any

Parcel in accordance with Section 3.8.4 hereof, then such termination shall also be treated as a Redesign Trigger Event under Section 4.2.3 hereof.

**4.2.2 Performance Benchmarks/Tolling For Site 12.** The provisions of this Section 4.2.2 apply only to the developable area of Site 12 (the “**Site 12 Development Parcel**”) as that site is shown on Exhibit B-5 attached hereto. The Navy shall comply with the following performance benchmarks for the Site 12 Development Parcel (each, a “**Performance Benchmark**”):

**4.2.2.1 Site 12 Performance Benchmarks.** The Navy shall comply with the following Performance Benchmarks for the Site 12 Development Parcel on or before the dates for those benchmarks set forth in the Conveyance Schedule (each, a “**Site 12 Performance Benchmark**”):

**4.2.2.1.1** The issuance of a Record of Decision for the Site 12 Development Parcel (the “**Site 12 ROD**”) that would not prohibit the timely development of the Site 12 Development Parcel in accordance with the Illustrative Land Use Plan for multi-family residential use at the densities contemplated by the Project (as shown on Exhibit Z).

**4.2.2.1.2** The Navy’s satisfaction of all Closing Conditions for transfer of the Site 12 Development Parcel to the Authority in accordance with the Conveyance Schedule and delivery of all Navy Closing Documents in accordance with Section 8.2.

**4.2.2.2 Tolling for Failure to Meet Performance Benchmarks.** If the Navy fails to meet the Site 12 Performance Benchmarks within the time provided, including by reason of an Excusable Delay, then the Authority’s obligation to pay any future Installment Payment on the Anniversary Date of the Initial Closing will be tolled for the same number of days occurring between the applicable Performance Benchmark date and the date on which the applicable Performance Benchmark is satisfied. If such tolling occurs, the due date for all future Installment Payments shall become the Anniversary Date of the Initial Closing adjusted for the period of tolling. For example, if the Site 12 ROD Performance Benchmark must be satisfied by August 1, 2013, the next subsequent Installment Payment was due on January 1, 2014, and the Site 12 ROD Performance Benchmark was satisfied on April 1, 2014 (a delay of 243 days), then the next Installment Payment would be due on September 1, 2014 (i.e. 243 days from the original Anniversary Date of January 1, 2014), and all future Installment Payments would be due on September 1 of subsequent years in the Initial Consideration Term unless further tolled.

**4.2.2.3 Tolling for More than Two Years.** If tolling under Section 4.2.2.2 continues for a period of more than two (2) years, the Parties shall meet and confer in good faith to determine whether or not it is reasonably foreseeable that the Navy will be able to meet the applicable Performance Benchmark within a reasonable period of time. If the Parties determine that the reasons for the delay can be overcome through the good faith and diligent efforts of the Navy and will likely result in the satisfaction of the applicable Performance Benchmark, then the Parties may by mutual agreement adjust the Performance Benchmark date to account for the delay. If the Parties do not reach agreement within sixty (60) days after the



1 first meet and confer (subject to extension by mutual agreement of the Parties), then the  
2 procedures of Section 4.2.3 and 4.2.4 shall apply.

3  
4 **4.2.3 Redesign Trigger Events.** If the Navy fails to (i) meet the Site 12  
5 Performance Benchmarks within the applicable two year period and the Parties do not  
6 mutually agree to extend such period, or (ii) if this Agreement terminates as to any Parcel in  
7 accordance with Section 3.8.4 hereof (for any reason other than failure to satisfy the Closing  
8 Conditions in Section 3.7.1.8 or Section 3.7.1.10 (other than by reason of Navy's breach of its  
9 covenants in Section 3.5.2.2), which Parcel or portion thereof is located within the  
10 development footprint (as that area is shown on the Illustrative Land Use Plan) (each of the  
11 foregoing events, a "**Redesign Trigger Event**"), the Authority shall have the right to re-entitle,  
12 redesign and rebuild portions of the Project (the "**Redesign Plan**"). The scope of the Redesign  
13 Plan shall be to the extent reasonably necessary, as determined by the Authority, to recapture  
14 the lost value to the Project resulting from the Redesign Trigger Event. The primary goal of  
15 any Redesign Plan shall be to recover an equivalent amount of development value attributable  
16 to the applicable parcel based on the level of development permitted by the Project and  
17 Developer's financial projections, or if the parcel is an open space parcel, based upon the lost  
18 value to the Project resulting from the redesign of the affected open space. The Redesign Plan  
19 shall address the rebuilding of already constructed Horizontal Improvements to the extent  
20 necessary to accommodate the redesign, and shall identify the incremental level of additional  
21 Horizontal Improvements, if any, required as a result of the redesign.

22  
23 **4.2.4 Work Program and Budget.** No later than one hundred eighty (180) days  
24 after a Redesign Trigger Event (as such date may be extended in the reasonable discretion of  
25 the Navy), the Authority shall submit to the Navy a work program and budget (the "**Work**  
26 **Program**" and the "**Redesign Budget**") for the Redesign Plan. The Work Program shall set  
27 forth the anticipated work program and schedule necessary to prepare, entitle and implement  
28 the Redesign Plan. The Redesign Budget shall estimate the anticipated costs necessary to  
29 prepare, entitle and implement the Redesign Plan (the "**Redevelopment Plan Redesign**  
30 **Costs**"). Redevelopment Plan Redesign Costs shall include, without limitation, all Soft Costs  
31 related to the Redesign Plan, including without limitation, costs associated with any subsequent  
32 environmental review that is required pursuant to CEQA, and Hard Costs related to the  
33 rebuilding, replacing, relocating or incremental cost of additional Horizontal Infrastructure as  
34 necessary to accommodate the Redesign Plan. The Navy shall have ninety (90) days to review  
35 the Work Program and Redesign Budget and shall be deemed to have approved the Work  
36 Program and Redesign Budget unless it delivers a written objection notice within such ninety  
37 (90) day period including reasonably detailed grounds for any material objections thereto. The  
38 sole grounds for the Navy's objection rights shall be that the proposed Redevelopment Plan  
39 Redesign Costs exceeds the scope for such costs permitted under Section 4.2.3 hereof. Failure  
40 of the Navy to deliver a written objection notice within such ninety (90) day period shall be  
41 deemed approval of the Redevelopment Plan Redesign Costs.

42  
43 **4.2.5 Credit for Redevelopment Plan Redesign Costs.** Starting on the date that  
44 is thirty (30) days after submittal of the Work Program and Redesign Budget (or in the event of  
45 a Navy objection related to the Work Program and Redesign Budget under Section 4.2.4 that  
46 results in approved Redevelopment Plan Redesign Costs, upon the resolution of such dispute)

(the "Credit Commencement Date"), the period of tolling under Section 4.2.2.2 shall be discontinued, but Authority shall have the right to a credit against all subsequent payments of Initial Consideration or Additional Consideration up to the total amount of either (i) the Redevelopment Plan Redesign Costs set forth in the Redesign Budget, or (ii) the Redevelopment Plan Redesign Costs actually incurred by Developer and Authority if such amount exceeds the Redevelopment Plan Redesign Costs set forth in the Redesign Budget. The Navy is not responsible for Redevelopment Plan Redesign Costs that exceed the Initial and Additional Consideration. Any such credit shall also be subject to the accounting and reconciliation procedures of Section 4.3.5 and 4.3.6.2.

4.2.6 Security for Initial Consideration. The Authority shall sign and deliver to the Navy through escrow at the Initial Closing a Promissory Note in the principal amount of the Initial Consideration. The Promissory Note shall bear interest and be payable in installments as more particularly described in Section 4.2.1 above. The Promissory Note shall be secured by (i) an Assignment of Rents encumbering the rents, issues and profits payable under all interim subleases for the Navy Real Property including, but not limited to, that certain Sublease, Development, Marketing and Property Management Agreement between the Authority and the John Stewart Company dated March 17, 1999, as amended from time to time, and any successor interim subleases or leases relating to the Navy Real Property whether executed prior to or after a conveyance hereunder, and (ii) to the extent the rents, issues and profits assigned under the Assignment of Rents are not sufficient to cover the unpaid principal and interest due under the Promissory Note, a Subordinate Pledge of Net Available Tax Increment Revenues generated from the Navy Real Property prior to or after a conveyance hereunder. The Subordinate Pledge shall be subordinate to the pledge of Net Available Tax Increment Revenues to the holders of any bonded indebtedness and to the Developer under the DDA; provided, however, that the DDA shall provide that all such Net Available Tax Increment Revenues to be paid directly to Developer in reimbursement for the expenditure of Qualified Project Costs (as defined in the DDA) shall be withheld from Developer by the Authority and held for the account of the Navy upon the occurrence of and for the duration of any default of a payment of Initial Consideration hereunder. "Net Available Tax Increment Revenues" means the tax increment revenues arising under the Treasure Island/Yerba Buena Island Redevelopment Plan and received by the Authority, exclusive of (a) the tax increment revenues required under California Community Redevelopment Law ("CRL") to be set aside for housing, (b) tax increment revenues required under CRL to be paid to other taxing agencies, (c) tax increment revenues needed to pay the Authority Costs Payment, and (d) tax increment revenues required to make a valid payment obligation imposed by law on the Authority, such as a required payment into the State's Education Revenue Augmentation Fund. The forms of the Promissory Note, Assignment of Rents, and the Subordinate Pledge are attached to this Agreement as Exhibit HH, Exhibit II, and Exhibit JJ. All rents, issues and profits payable to Developer under any agreement subject to the Assignment of Rents shall be immediately paid and payable directly to the Authority on account of the Navy, or directly to the Navy, as provided by the terms of the Assignment of Rents, commencing on, and for the duration of, any default in the payment of Initial Consideration hereunder.

#### 4.3 Additional Consideration.

4.3.1 Amount of Additional Consideration. The Authority shall pay the Navy additional consideration consisting of (1) 100% of Net Cash Flow generated by the Project in excess of a Developer 18% IRR until the Navy has received Fifty Million Dollars (\$50,000,000) (the "**First Tier Participation**"), as more fully described below; and (2) 35% of Net Cash Flow generated by the Project in excess of a Developer 22.5% IRR (the "**Second Tier Participation**"), as more fully described below. The First Tier Participation and Second Tier Participation are collectively referred to herein as the "**Additional Consideration**." Payments of Additional Consideration may be made directly by the Developer on behalf of the Authority to the Navy.

4.3.2 Payment of First Tier Participation. Within forty-five (45) days after the expiration of the eighth full calendar Quarter occurring after the Initial Closing and forty-five (45) days after the expiration of each subsequent Quarter during the Term hereof, the Authority shall require the Developer to submit a reasonably detailed statement to the Authority and the Navy (the "**IRR Statement**") accompanied by an Accounting consistent with Section 4.3.5 hereof showing (i) the cumulative IRR achieved for each of the eight (8) immediately prior Quarters for any IRR Statement provided during the Initial Consideration Term, and (ii) the cumulative IRR achieved for each of the six (6) prior Quarters for any IRR Statement provided after expiration of the Initial Consideration Term (the eight or six Quarter Period, as applicable, the "**Reporting Period**"). The IRR Statement shall also calculate the average IRR over the Reporting Period, calculated by adding the IRR of each Quarter in the Reporting Period and dividing the total by the number of Quarters in the Reporting Period. If the IRR Statement shows that Developer has achieved an average IRR of more than 18.00% over the Reporting Period, then the Authority shall within forty-five (45) days after the expiration of the eighth full calendar Quarter occurring after the Initial Closing and forty-five (45) days after the expiration of each subsequent Quarter during the Term hereof, pay the Navy an amount that would reduce the cumulative IRR to 18.00% as of the end of the Reporting Period (each, a "**First Tier Payment**") provided that the total First Tier Payments made to the Navy shall not exceed Fifty Million Dollars (\$50,000,000). First Tier Payments shall be made until the total of all First Tier Payments equals Fifty Million Dollars (\$50,000,000). All payments of First Tier Participation shall be due and payable in accordance with Section 4.3.5 hereof.

4.3.3 Payment of Second Tier Participation. The Authority shall continue to submit the IRR Statement and Accounting through the Termination Date. If an IRR Statement shows that Developer has achieved an average IRR of more than 22.5% within any Reporting Period occurring after considering all First Tier Payments, then the Authority shall within forty-five (45) days after the expiration of the eighth full calendar Quarter occurring after the Initial Closing and forty-five (45) days after the expiration of each subsequent Quarter during the Term hereof, pay the Navy 35% of the total amount of Net Cash Flow that would reduce the cumulative IRR to 22.5% as of the end of the Reporting Period (each, a "**Second Tier Payment**"). Second Tier Payments shall be made until the Termination Date. All payments of Second Tier Participation shall be due and payable in accordance with Section 4.3.5 hereof.

4.3.4 Late Payments and Default. Any failure to pay Initial Consideration and associated interest or Additional Consideration within ten (10) days after the payment due date shall be considered late ("**Late Payment**"). Any Late Payment will incur a late payment

penalty equal to two and one-half percent (2 ½ %) of the payment due. Failure to make any required payment under this Agreement in full within thirty (30) calendar days shall constitute a default under this Agreement. Any Late Payment constituting a default hereunder shall accrue interest at the Default Interest Rate from the due date and the Default Interest Rate shall remain in effect on the Late Payment amount until paid. Any late payment penalty and default interest shall not be allowed as a Development Cost. Without limiting any other remedies that the Navy may have at law or equity, if the Authority is in default of this Agreement, the Navy may delay conveyances of additional Parcels without the tolling provisions of Section 4.2.2.2 until the Authority has cured the default.

#### 4.3.5 Accounting.

4.3.5.1 Accounting. The Authority shall cause the Developer to maintain accurate books and records specific to the Project setting forth all components used for determining the Additional Consideration, including, without limitation, each component of Net Cash Flow, and to determine the amount of Redevelopment Plan Redesign Costs and credits against Initial and Additional Consideration. The Authority shall ensure that each IRR Statement submitted by Developer as required by Sections 4.3.2 and 4.3.3 is accompanied by a complete accounting and computations setting forth the basis of each Additional Consideration to be paid, including the Gross Revenues and Development Costs for the relevant determination period, together with a narrative description of the methodology employed to calculate each Additional Consideration Payment to be due for the relevant period (the “Accounting”). The Accounting shall be in conformance with generally accepted accounting principals consistently applied (“GAAP”) where applicable, or with respect to the IRR Statement, in conformance with appropriate industry standards. An annual accounting shall be provided to the Navy in accordance with Section 5.9.1 hereof. The Navy shall either approve each Accounting in writing or provide written notice providing reasonable detail of its objections to or queries of the Accounting within forty-five (45) days of receipt thereof, provided that the Navy’s failure to respond within such forty-five (45) day period shall be deemed consent. If the Navy objects to the Accounting, it may determine to exercise its audit rights pursuant to Section 4.3.7.

4.3.5.2 Marina Property Accounting. The Authority shall determine on a quarterly basis all gross revenues and related expenses associated with the Marina Property, and shall prepare a reasonably detailed statement showing all net revenues received by Authority from the Marina Property. Authority shall provide such statement to Developer in a timely manner in order for Developer to credit against its payment of Authority Costs for the applicable quarter the amount of net revenues received by Authority from the Marina Property. Authority shall provide a copy of such Marina Property statement to the Navy along with each Accounting, and each Annual Accounting provided, and the Accounting and Annual Accounting provided to the Navy shall reflect the credit for the Authority Costs.

#### 4.3.6 Reconciliation.

4.3.6.1 Reconciliation of Final IRR. The Authority shall, within one hundred and eighty (180) days after the Termination Date, submit a Final IRR Statement and

Accounting to the Navy, showing the Developer's IRR for the entire term of the Project (the "Final IRR") and all payments of Additional Consideration made to the Navy hereunder. The Final IRR Statement and Accounting shall be performed and certified by an independent Certified Public Accountant in accordance with appropriate industry standards. If the Final IRR Statement and Accounting discloses that the Final IRR exceeded 18% but payments to the Navy of First Tier Participation were less than \$50 million, the Authority shall pay to the Navy the amount necessary to reduce the Final IRR to 18%, so long as the total of all First Tier Participation payments do not exceed \$50 million. If the Final IRR Statement and Accounting discloses that the Final IRR exceeded 22.5%, but payments to Navy of Second Tier Participation hereunder totaled less than 35% of Net Cash Flow for the Project above a 22.5% Final IRR, then Authority shall cause to be paid to Navy the amount of Net Cash Flow necessary to raise the total of Second Tier Participation payments to equal 35% of all Net Cash Flow above a 22.5% Final IRR.

4.3.6.2 Reconciliation of Redevelopment Plan Redesign Costs. Within one hundred eighty (180) days after completion of all planning, entitlement, design and rebuilding work required under the Redesign Plan, as evidenced by City acceptance of all public improvements and final building inspection sign-off for all improvements as identified in the Work Program, Authority shall provide Navy with a statement that includes an accounting of all Redevelopment Plan Redesign Costs actually incurred by Developer and Authority, and a statement of the amount of credit against Initial Consideration actually taken by Authority. The accounting shall be performed and certified by an independent Certified Public Accountant in accordance with GAAP. To the extent that the amount of the credits taken against Initial Consideration exceeds the actual Redevelopment Plan Redesign Costs shown on the statement, Authority shall promptly cause the Navy to be paid the difference. If the amount of the credit against Initial Consideration is less than the actual Redevelopment Plan Redesign Costs as shown on the Statement, then Authority shall be permitted to continue to credit Initial Consideration and Additional Consideration until the entire actual Redevelopment Plan Redesign Costs are recovered. The Navy is not responsible for Redevelopment Plan Redesign Costs that exceed the Initial and Additional Consideration.

4.3.7 Audit Rights. The Navy shall be entitled from time to time to audit the Developer's books, records, and accounts pertaining to the Net Cash Flow and all components thereof, the payment of Additional Consideration and the calculations, payments and credits relating to the Redevelopment Plan Redesign Costs. Such audit shall be conducted during normal business hours upon ten (10) business days notice at the principal place of business of the Developer and other places where records are kept. The Navy shall provide the Developer with copies of any audit performed. If it shall be determined as a result of such audit that there has been a deficiency in the payment of any Additional Consideration or an over-credit against Initial Consideration, the Authority shall immediately pay any such deficiency with interest at the Default Interest Rate. In addition, if it shall be determined as a result of such audit that an Accounting has understated the Net Cash Flow for the applicable period by more than five percent (5%), the Authority or the Developer on behalf of the Authority, shall be required to pay, in addition to interest as aforesaid, all of the Navy's costs and expenses connected with the audit or review of Developer's accounts and records for the Project. All such payments



shall be paid within thirty (30) days of receipt of written notice to the Authority of such underpayment and such audit costs shall not be allowed as a Development Cost.

## ARTICLE 5 CONTROLS

5.1 Horizontal Development Process. The Parties acknowledge that the transaction contemplated by the DDA anticipates that the Developer will (among other things) construct certain infrastructure improvements and otherwise prepare the Navy Real Property to be divided into Lots that will be offered for sale or ground lease for the development of the vertical improvements. As described below, the sale price or ground lease value of Lots shall be determined in accordance with this Article.

### 5.2 Sale or Ground Lease of Commercial Lots.

5.2.1 Development by Developer of Critical Commercial Lots. Those Lots designated for commercial use or development in the Illustrative Land Use Plan (collectively, the "**Commercial Lots**") will be divided into two groups. The first group (the "**Critical Commercial Lots**"), consists of Block M-1 and Buildings 1, 2 and 3 which will be developed by Developer pursuant to the terms of the DDA. Developer may ground lease or purchase (as the case may be) up to one hundred percent (100%) of the Critical Commercial Lots in accordance with this Section 5.2.1. The second group ("**Non-Critical Commercial Lots**") consists of all other Commercial Lots including any of the Critical Commercial Lots that Developer elects not to develop, to the extent permitted under the DDA. If Developer by itself or in joint ventures with other development partners develops the Critical Commercial Lots, the sales price or capitalized ground lease rent (as the case may be) for the Critical Commercial Lots purchased by or ground leased to Developer or the Developer joint venture entity (the "**Critical Commercial Lots Payment**") shall be derived from a pro-forma (including the financial model of any vertical development that requires a subsidy) prepared by Developer at the commencement of each "Major Phase" described in the DDA (and updated periodically during the Major Phase), showing reasonable detail of projected revenues, expenses, subsidies and/or target returns associated with the Critical Commercial Lots, acknowledging that to the extent that the Critical Commercial Lots require subsidy for development, the Critical Commercial Lots Payment may be \$0.00. Developer will provide this information to an independent appraiser and shall request a letter report confirming the appropriateness of Developer's assumptions and conclusions related to the Critical Commercial Lots. No potential or actual investor or lender shall be prohibited by an exclusivity agreement between the Developer and other investors or lenders from participating in any financing of any Commercial Lot or any other commercial product type developed by parties other than Developer.

1                   5.2.2 Transfer by Developer of Developed Critical Commercial Lots.

2     Developer or the Developer joint venture entity developing the Critical Commercial Lots may,  
3     in its sole discretion, subsequently transfer (as that term is defined in the DDA) any of the  
4     developed Critical Commercial Lots (the **“Developed Critical Commercial Lots”**) to a third  
5     party, provided, however, that any and all revenues received by Developer or the Developer  
6     joint venture entity arising from or associated with the transfer of the Developed Critical  
7     Commercial Lots shall be treated as Gross Revenues hereunder. Transfer of the Developed  
8     Critical Commercial Lots shall be by sale, or by sub-ground lease or assignment of ground  
9     lease, provided, however, with respect to the first transfer of a ground lease by Developer, the  
10    transferee shall be required to pay a transfer payment based upon the fair market value for the  
11    right to occupy the applicable Developed Critical Commercial Lot on the terms and conditions  
12    of the ground lease. A joint venture entity in which Developer holds an ownership interest  
13    may purchase the Developed Critical Commercial Lot and in such case, the transfer price shall  
14    be determined in accordance with the Appraisal Process described in Section 5.4 hereof. If  
15    Developer elects to sell the Developed Critical Commercial Lot to a third-party entity (such  
16    parcel, a **“Non-Developer Critical Commercial Lot”**), the transfer price shall be determined  
17    by Auction pursuant to the Auction process applicable to Commercial Lots, as set forth in  
18    Section 5.2.4 below.

19  
20                   5.2.3 Sale or Ground Lease of Non-Critical Commercial Lots. At such time as

21    deemed appropriate by the Authority and Developer pursuant to the terms of the DDA, the  
22    Authority shall convey to Developer the Non-Critical Commercial Lots. Upon such  
23    conveyance, Developer shall be required to offer by Auction the Non-Critical Commercial Lots  
24    for sale or sub-ground lease or assignment of ground lease (as applicable).

25  
26                   5.2.4 Auction Process for Commercial Lots. The Auction for a Non-Critical

27    Commercial Lot shall set a minimum bid price based on the pro-forma prepared by the  
28    Developer at the commencement of the applicable Major Phase and updated from time to time  
29    (as confirmed by an appraiser letter described in Section 5.2.1). The minimum bid price shall  
30    be set for the Auction for a Non-Developer Critical Commercial Lot immediately prior to the  
31    applicable Auction. The pool of qualified bidders in the Auction of any Non-Critical  
32    Commercial Lots or any Non-Developer Critical Commercial Lots shall be determined by the  
33    Authority and Developer prior to the applicable Auction based on the Auction Bidder  
34    Selection Guidelines applicable to Commercial Lots (attached hereto as Exhibit S-2). The pool  
35    of qualified bidders in the Auction of any Non-Critical Commercial Lot or any Non-Developer  
36    Critical Commercial Lot and the minimum bid price for the Auction of Non-Developer Critical  
37    Commercial Lots shall be provided to the Navy at least 10 days prior to the applicable Auction.  
38    If no qualified bids are received for the Non-Critical Commercial Lots, Developer and/or its  
39    affiliates will have the option to purchase such Commercial Lot(s) based upon an appraisal in  
40    accordance with Section 5.4 hereof. If Developer does not exercise the option to purchase  
41    unsold Non-Critical Commercial Lot(s), the Authority and Developer shall mutually agree  
42    upon a new minimum bid price to be used in a new Auction, which may take the form of  
43    adjustment to the pro forma minimum bid price or an appraisal. In such case, the Authority  
44    shall cause Developer to re-bid the Non-Critical Commercial Lot at such time deemed  
45    appropriate by the Authority and Developer pursuant to the terms of the DDA. If no minimum  
46    bids from qualified bidders are received for the Non-Developer Critical Commercial Lots that

are acceptable to Developer, Developer shall reserve the right to withdraw the Non-Developer Critical Commercial Lot from sale and re-bid the Non-Developer Critical Commercial Lot at such future time deemed appropriate in accordance with the terms of the DDA.

**5.3 Sale of Market Rate Lots.** Those Lots identified on the Illustrative Land Use Plan as appropriate for the development of residential units that are sold or leased at predominantly market rates (the "**Market Rate Units**") shall be referred to in this Agreement as the "Market Rate Lots." Developer may purchase Market Rate Lots for up to sixty percent (60%) of the Market Rate Units (the "**Developer Lots**"), at a purchase price established by the Appraisal Process described in Section 5.4. Market Rate Lots for approximately twenty percent (20%) of the Market Rate Units shall be available for purchase (at a purchase price established by the Appraisal Process set forth in Section 5.4) by joint ventures in which the Developer or its affiliates have no more than a fifty percent (50%) ownership interest and under which a non-affiliated joint venture partner exercises management control as the "managing partner" (or member, as the case may be) of the joint venture entity (collectively, the "**JV Lots**"). In order to ensure that the Developer Lots and JV Lots are sold at fair market value, Market Rate Lots for approximately twenty percent (20%) of the Market Rate Units will be offered for sale via Auction (collectively, the "**Residential Auction Lots**") in accordance with Section 5.5. No potential or actual investor or lender shall be prohibited by an exclusivity agreement between the Developer and other investors or lenders from participating in any financing of any Market Rate Lot or any other residential product type developed by parties other than Developer.

**5.3.1 Developer Lots.** Unless otherwise agreed upon by the Parties in their reasonable discretion, no more than one-third of the Developer Lots (which also equals 20% of the Market Rate Lots) can be sold directly to Developer, and the balance of the Developer Lots may be sold to an entity or entities comprised of some or all of the same partners as Developer, but having a materially different capital structure than Developer, in accordance with the Appraisal Process. Concurrent with the sale of any Developer Lot to an entity or entities comprised of some or all of the same partners as Developer, but having a materially different capital structure than Developer, a duly authorized officer of Developer shall provide the Authority and Navy with a certified statement that the prospective purchaser has a materially different capital structure than Developer. For purposes hereof, an entity having a "materially different capital structure" means an entity comprised of some or all of the same partners as Developer but one in which there has been a cumulative change of at least 25% in the capital positions of all the partners, and at least one of the partners has changed its capital position by at least 15%. Before the close of each Major Phase, the Developer will provide to the Authority and Navy a list of equity investors for that Major Phase. During the implementation of any Major Phase, Developer will provide to the Authority and Navy immediately prior to the sale of any parcels to an affiliate of Developer or the equity investors of that Major Phase, a notice of such affiliate sale which notice shall describe why the sale is permitted under the terms of this Agreement. Prior to the close of any sale directly to Developer, the Authority shall cause Developer to provide to the Navy a letter from a real estate broker or licensed real estate professional familiar with the Bay Area market who is not an affiliate of the Developer and has no equity investment in the Developer in such Major Phase, finding that acquisition and development of the Market Rate Lot by the Developer is appropriate in the context of then-existing market conditions. The basis of such findings could include, but is not limited to, establishing a new product type, initiating or establishing the development of a new phase in



the Project, responding to changes in market conditions, or other similar market-based factors. Any disputes arising out of this Section 5.3.1 shall be referred to the arbitration process for other disputes set forth in Section 27.3.3 hereof.

5.4 Appraisal Process. The process described in this Section 5.4 (the "Appraisal Process") shall apply to the Developer Lots, the JV Lots and those Developed Critical Commercial Lots and Non-Critical Commercial Lots for which an appraisal is required under Sections 5.2.2 or 5.2.4. The Authority and Developer shall confer and select an appraiser from the Qualified Appraiser Pool for each such Developed Critical Commercial Lot, Developer Lot, Non-Critical Commercial Lot or JV Lot to be appraised. An appraisal used for the purpose of determining the parcel sale price (or ground lease rent, if applicable) shall be updated if a sales contract (or ground lease) for such parcel has not been executed within one (1) year from the date of the appraisal.

5.4.1 Qualified Appraiser Pool. Appraisals of any Developed Critical Commercial Lots required to be appraised by Section 5.2.2, the Developer Lots, Non-Critical Commercial Lots required to be appraised under Section 5.2.4 and JV Lots shall be conducted by a qualified appraiser, which for purposes of this Agreement and the DDA shall be defined as an appraiser (i) licensed in the State of California as a Certified General Appraiser and holding the MAI designation from the Appraisal Institute, (ii) practicing or working for at least ten (10) years in either a national firm, or regional firm based in California, (iii) who is not an affiliate of the Developer and has no equity investment in the Developer or the Project investors, (iv) who has particular experience with coastal California real property transactions involving the Product Type that is the subject of the appraisal, and (v) who has no conflict of interest as evidenced by contractual relationships with Developer either existing or in the immediately prior 24 months, unless a conflict waiver is obtained from the Navy. The Parties have agreed upon a list of pre-qualified appraisers, which list is attached hereto as Exhibit Y (the "Qualified Appraiser Pool"). From time to time, either Party may propose in writing to add or subtract additional persons meeting the above qualifications. If the Parties disagree on a proposed addition or subtraction, then the Parties shall follow the dispute resolution procedure set forth in Section 27.3.2.

5.4.2 Appraisal Instructions. The selected appraiser shall appraise the applicable Developer Lot, JV Lot, Non-Critical Commercial Lot (to the extent subject to appraisal under Section 5.2.4) or Developed Critical Commercial Lot (to the extent subject to appraisal by Section 5.2.2) utilizing appraisal instructions by appropriate Product Type substantially in the form of those attached hereto as Exhibit X-1 through X-4, as the Parties hereto may agree to amend from time to time which agreement shall not be unreasonably withheld, conditioned or delayed. If an Excess Land Appreciation Structure is established in a Major Phase by Product Type, such structure will be deemed to apply to all Market Rate Lots, and the appraisal instructions shall incorporate such terms. If material changes are proposed to appraisal instructions, including assumptions, special assumptions, limiting conditions, hypothetical conditions, and other special instructions, the requesting Party shall propose such amendment in writing, and, if the Parties disagree, they shall follow the dispute resolution procedure set forth in Section 27.3.2.

1  
2           5.4.3 Notification of Appraisal. The Authority shall provide to the Navy  
3 documentation of appraiser selection and appraisal instructions prior to the commencement of  
4 the appraisal and shall provide a copy of the complete appraisals promptly following  
5 completion of all appraisals.

6           5.5 Auction Process for Residential Auction Lots. The Authority and Developer at  
7 the commencement of any Major Phase, as described below in Section 5.6, shall jointly  
8 determine the pool of qualified bidders for each Auction of an Auction Lot based on the Auction  
9 Bidder Selection Guidelines for Residential Auction Lots (attached hereto as Exhibit S) set forth  
10 for each Product Type, as agreed upon by the Parties. In the event no qualified third party bids  
11 are received at or above the minimum bid price (as described in Section 5.6.3) for the Residential  
12 Auction Lots, Developer and/or its affiliates will have the option to purchase such Auction Lot(s)  
13 at the minimum bid price and any Residential Auction Lots so acquired by Developer shall not  
14 be deemed to apply against the percentage limits otherwise applicable to the Developer Lots or  
15 the JV Lots. If Developer does not exercise the option to purchase unsold Auction Lot(s), the  
16 Authority and Developer shall mutually agree upon a new minimum bid price to be used in a  
17 new Auction (the "**Re-Setting of the Minimum Bid Price**"). The Re-Setting of the Minimum  
18 Bid Price may take the form of adjustment to the pro forma minimum bid price or an appraisal.  
19 All costs associated with the Auction shall be treated as Development Costs.

20           5.5.1 Timing of Residential Auction Lots Selection. The Residential Auction  
21 Lots will be selected by mutual agreement by the Authority and the Developer prior to close of  
22 escrow for each Major Phase.

23           5.5.2 Residential Auction Lots as Benchmarks. The Auction Lot sales prices,  
24 as deemed appropriate by the appraisers, and other relevant market data shall be used as  
25 comparables in the appraisal process for the Developer Lots and the JV Lots. The mix of  
26 Product Types of the Market Rate Lots subject to Auction shall roughly mirror that of the  
27 Market Rate Lots to be allocated and sold in that Major Phase, with a goal of selecting at least  
28 one representative parcel for each Market Rate Lot Product Type offered in that Major Phase.  
29 For the purposes of this Agreement and the DDA, "**Product Types**" are defined as a  
30 residential building with a typical unit count and building typology that allows general  
31 assumptions of construction costs. Examples of such Product Types are townhomes; low rise  
32 (up to [76'/85'] in height); mid rise (above 76'/85' and up to 120' in height) and towers (above  
33 120' in height).

34           5.5.3 Guidelines for Residential Auction Lots Selection. The distribution and  
35 selection of the Residential Auction Lots shall be based on a principle of nondiscrimination.  
36 The selected Residential Auction Lots shall be generally representative of the average  
37 advantages and disadvantages of the Market Rate Lots to be developed in that Major Phase.  
38 Factors to be considered in such selection include, but are not limited to, parcel size, views,  
39 proximity to parks, proximity to the transit center, proximity to the Job Corps site, proximity to  
40 the Bay Bridge, proximity to the retail core and exposure to wind (collectively, the  
41 "**Guidelines for Residential Auction Lot Selection**"), attached hereto as Exhibit FF.

1           5.6    Major Phase Decisions. Prior to the close of escrow of each Major Phase, the  
2 following decisions (collectively, the “**Major Phase Decisions**”) shall be agreed upon by the  
3 Authority and the Developer and notice thereof shall be provided to the Navy as more fully  
4 described in Section 5.6 below:

5           5.6.1 The proposed location of Residential Auction Lots within that Major  
6 Phase as shown on a revised land plan for that Major Phase showing the distribution of various  
7 Product Types.

8           5.6.2 The qualifications of Residential Auction Lot bidders by Product Type  
9 for that Major Phase based on the applicable Auction Bidder Selection Guidelines.

10           5.6.3 Minimum bid prices for the Residential Auction Lots and the Non-  
11 Critical Commercial Lots, which shall be based on the pro forma, as updated prior to the close  
12 of escrow for such Major Phase, as well as any Re-Setting of the Minimum Bid Price, as  
13 described above.  
14

15           5.6.4 The Excess Land Appreciation Structure for that Major Phase for each  
16 Product Type in such Major Phase, as well as any re-evaluation of the Excess Land  
17 Appreciation Structure during any Major Phase. For purposes of this Agreement and the DDA  
18 the “Excess Land Appreciation Structure” is defined as the structure, procedures and metrics of  
19 the then-prevailing, industry standard market based participation in price appreciation greater  
20 than forecast at the time of such pad sale (if any) for horizontal development land sellers.

21  
22           5.7    Navy Objection Rights to Major Phase Decisions.

23           5.7.1 Notice. The Authority shall send a notice to the Navy in writing  
24 providing the details of the Major Phase Decisions (the “**Major Phase Decision Notice**”). The  
25 Navy shall have the right to reasonably object to any of the Major Phase Decisions (or any  
26 component part thereof) if the Navy believes any of the following is true with respect to the  
27 Major Phase Decision at issue: (i) the mix of Product Types for the Residential Auction Lots  
28 were not sufficient to achieve adequate benchmarking for that Major Phase; or (ii) the  
29 Guidelines for Residential Auction Lot Selection were not followed; or (iii) the Excess Land  
30 Appreciation Structure is not commensurate with industry practice, market based participations  
31 for that Product Type in such Major Phase; or (iv) the Auction Bidder Selection Guidelines  
32 were not followed.  
33

34           5.7.2 Right to Object. The Navy shall have ten (10) business days from  
35 certified receipt of the Major Phase Decision Notice to object in writing, which grounds may  
36 include failure to provide adequate information necessary for the Navy’s review, and any such  
37 objection shall state with specificity the item or items to which the Navy objects or the items of  
38 additional information reasonably requested by Navy. Failure to so object in writing within  
39 such ten (10) business day period shall be deemed consent. The Authority shall have five (5)  
40 business days to respond to the objection or to seek to confer, as more fully set forth in Section

27.2. If the Authority responds and the Parties do not reach agreement with one another after such response, either Party can request to confer (as set forth in Section 27.2.1). If a conference is requested, the Parties shall confer and attempt to resolve the outstanding objections within five (5) business days of the conference request. Failure to reach agreement at such meeting shall be referred to the expedited dispute resolution process set forth more fully in Section 27.3.2.

5.8 Audit Rights and Reporting. The Authority agrees to submit to the Navy annual audited financial statements specific to this Project within thirty (30) calendar days of completion of the annual audited financial statements, which completion shall in no case be later than ninety (90) calendar days after the end of the year being audited. The Navy shall have commercially reasonable access to the Developer's auditors if the Navy needs clarifications relating to the financial statements. Authority shall provide Navy with annual statements of its records maintained pursuant to Section 5.13.2 hereof, certified by Authority's chief financial officer or equivalent.

5.9 DDA Audit Rights and Reporting. The Authority agrees to provide the Navy with copies of the DDA Reports and any audits promptly upon their receipt by the Authority and further agrees to cause the DDA to provide the following audit rights and reporting requirements for the benefit of the Authority and the Navy, provided, however, that the Navy shall treat such information as confidential to the fullest extent permitted under all laws, rules and regulations applicable to the Navy related to public disclosure of information as long as such confidentiality does not in any way limit the Navy's remedies hereunder:

5.9.1 The Developer shall provide to the Authority and the Navy, within ninety (90) calendar days after the end of each year, an annual Accounting consistent with the requirements of Section 4.3.5.1 annualized, including reports of Gross Revenues and Development Costs, including Net Cash Flow, specified by Major Phases and including a cumulative project level summary of IRR, executed by the Developer's Chief Financial Officer, certified by the Developer and reviewed by an independent accounting firm.

5.9.2 A summary pro forma (including the financial model of any vertical development that requires a subsidy) will be attached to the DDA as an exhibit and the budget will be updated by the Developer prior to the close of each Major Phase and submitted to the Authority and the Navy for its review.

5.9.3 The pro forma budget will be updated by the Developer and submitted to the Authority and the Navy annually in both a printed and electronic form. The electronic form of the pro forma must be in Microsoft Excel 2007 or its successor format.

5.9.4 The DDA shall provide the Authority and the Navy the right, but not the obligation, to audit the books and accounts of the Developer no more frequently than once per twelve (12) month period, unless such audit reveals a discrepancy in the calculation of Gross Revenues and/or Development Costs or the Developer is otherwise in material default of its financial obligations under the DDA. The Authority, or the Navy, as the case may be, shall bear all costs of such audit unless the results of the audit demonstrate more than a five percent (5%) discrepancy between the results of the audit and the annual financial statements provided

1 by the Developer. Payment by the Authority of audit costs shall not be allowed as a  
2 Development Cost if there is a discrepancy of more than five percent (5%). All such reports  
3 and audits are subject to the Authority's obligation to treat such information as confidential to  
4 the full extent permitted by law. The Navy shall treat such information as confidential to the  
5 fullest extent permitted under all laws, rules and regulations applicable to the Navy related to  
6 public disclosure of information as long as such confidentiality does not in any way limit the  
7 Navy's remedies hereunder.

8 5.10 DDA Timelines. The Authority shall provide a Schedule of Performance  
9 establishing commercially reasonable timelines for completion of each Major Phase, subject to  
10 industry standard force majeure provisions, including regulatory, economic and litigation force  
11 majeure.

12 5.11 Limit on Soft Costs for Purposes of Calculating Consideration. Except for a  
13 reasonable limit on Developer management and overhead fees as further provided herein,  
14 Developer Soft Costs will not be capped, but will be subject to a "reasonableness" standard,  
15 certain approval rights by the Authority, and subject to audit by the Authority. The Authority  
16 agrees that "reasonable" Developer's Soft Costs shall be defined as "incurred in a manner that is  
17 consistent with an efficient, well-managed project of comparable scope, duration and complexity  
18 and is commensurate with market-based charges by third party providers for similar projects."  
19 Whether or not the Developer utilizes unrelated third-party contractors for development,  
20 construction and property management services, such management fees and costs will not exceed  
21 market-based charges by third-party providers for similar projects, taking into account the level  
22 of project management, auditing and reporting requirements. The Developer may provide such  
23 management services internally, or through a combination of internal management services and  
24 third-party management contractors not owned or controlled by Developer. For purposes of  
25 determining Soft Costs for any particular scope of work, a construction management fee may be  
26 included not to exceed the lesser of four percent (4%) of Hard Costs or actual construction  
27 management fees actually incurred for such scope; a property management fee may be included  
28 not to exceed the lesser of two and one-half percent (2.5%) of lease revenues or actual property  
29 management fees actually incurred for such scope; and a development/project management fee  
30 not to exceed the lesser of three percent (3%) of Hard Costs or actual development/project  
31 management fees actually incurred for such scope. If the actual and reasonable costs incurred by  
32 Developer exceed the above limits, Developer, on behalf of the Authority may submit a request  
33 to the Navy to approve the increase of any applicable fee to an amount equal to the actual cost.  
34 Such requests shall be made in writing with appropriate supporting documentation. Failure of  
35 the Navy to respond in writing to any such request within thirty (30) days shall be deemed  
36 consent. Navy's consent shall not be unreasonably withheld or delayed, and Navy shall make its  
37 determination within thirty (30) days of Developer's request. If Navy requests additional  
38 information as may be reasonably required to make its determination within ten (10) days of  
39 Developer's request, then Navy shall make its determination denying or granting the request  
40 within thirty (30) days after receipt of such additional information. The Navy shall only deny its  
41 consent if it reasonably determines, as evidenced by its written determination provided to  
42 Developer and the Authority, that the cost limit exceedance is inconsistent with current market  
43 standards as applied to the scope and nature of the Project and the fee limit request is  
44 unreasonable under the circumstances. Any such exceedance objected to by the Navy in  
45 accordance with this Section shall not be included as Development Cost



1           5.12 Limit on City Fees and Exactions. The Authority shall limit City fees and  
2 exactions to those fees and exactions as set forth in the DDA, at the rate or amounts in effect as  
3 of the date of the DDA for a period of time specified in the DDA. The agreed upon development  
4 fees and exactions for the Project will be fixed for a specified period of time (through a  
5 Development Agreement, the Redevelopment Plan or other legally enforceable mechanism) and  
6 the application of new fees and exactions and changes in City regulations will be limited over the  
7 life of the Redevelopment Plan. To the extent legally permissible, the DDA or other legally  
8 enforceable mechanism shall include certain limits on the authority of the City and the Authority  
9 to impose new or amend City laws and regulations that would have a material adverse effect on  
10 the horizontal or vertical development by the Developer or Vertical Builders or the rights and  
11 obligations of the Developer or any Vertical Builder under the Redevelopment Plan and the  
12 DDA or other applicable transactional documents. Any City fees and exactions in violation of  
13 these limitations will not qualify as Development Costs.

14           5.13 Economic Development Purposes. Any proceeds from a sale, lease, or equivalent  
15 use of the Navy Real Property (i.e., any mechanism that serves to accomplish the same purposes  
16 of a sale or lease such as licenses, permits, concession agreements, etc.) received by the  
17 Authority for the Navy Real Property during the first seven (7) years after the recordation of the  
18 first Quitclaim Deed for a part of the Navy Real Property, must be used to pay the Navy the  
19 Initial Consideration and the Additional Consideration as set forth herein, or to support long-term  
20 job creation and the economic redevelopment of, or related to, the Navy Real Property. Tax  
21 revenues shall not be construed to be proceeds from a sale, lease, or equivalent use of the Navy  
22 Real Property.

23           5.13.1 Examples of Allowable Uses of Proceeds. Allowable uses of proceeds  
24 pursuant to Section 5.13 include payment for, or offsetting the costs of public investment, for  
25 the following purposes:

26                   5.13.1.1 Land acquisition;

27                   5.13.1.2 Road construction;

28                   5.13.1.3 Transportation management facilities;

29                   5.13.1.4 Storm and sanitary sewer construction;

30                   5.13.1.5 Police and fire protection facilities and other public facilities;

31                   5.13.1.6 Utility construction;

32                   5.13.1.7 Building rehabilitation;

33                   5.13.1.8 Historic property preservation;

34                   5.13.1.9 Pollution prevention equipment or facilities;

35                   5.13.1.10 Demolition;

1 5.13.1.11 Disposal of hazardous materials generated by demolition;

2 5.13.1.12 Landscaping, grading, and other site or public improvements;

3 and

4 5.13.1.13 Planning for or the marketing of the redevelopment and reuse  
5 of the Navy Real Property.

6 Other activities on the Navy Real Property that are related to those listed above  
7 (including, for example, new construction related to job creation and economic redevelopment,  
8 construction of affordable housing, environmental remediation of the Navy Real Property,  
9 environmental insurance, any other capital improvements required to support the economic  
10 redevelopment of the Navy Real Property, management and leasing of the Navy Real Property  
11 needed to market its redevelopment and reuse and implementation, oversight and regulation of  
12 redevelopment of the Navy Real Property via any contracts with public or private entities) would  
13 also be considered an appropriate, allowable use of such proceeds.  
14

15 5.13.2 Records. Consistent with standard accounting practices for tax purposes,  
16 the Authority shall maintain adequate records and books of account for income and expenses  
17 related to the redevelopment of the Navy Real Property detailing transactions described in  
18 Section 5.13 and Section 5.13.1. The Authority shall provide the Navy with access to such  
19 records and books of account and proper facilities for inspection thereof at all reasonable times.

20 5.13.3 Recoupment of Proceeds. The Navy may recoup all proceeds described  
21 in Section 5.13, which have not been reinvested in allowable uses described in Section 5.13 or  
22 Section 5.13.1. If recoupment is desired after review of annual financial statements, the Navy  
23 shall notify the Authority in writing that it intends to recoup proceeds in a specific amount,  
24 describing why it believes that those proceeds have not been reinvested as required by Section  
25 5.13 or Section 5.13.1. Within sixty (60) days of receipt of such notification, the Authority  
26 shall submit its response to the Navy. Within sixty (60) days of receipt of the Authority's  
27 response or within sixty (60) days of the date the Authority's response was due under this  
28 Section, the Navy shall issue its decision on the matter, which shall be final and binding on the  
29 Authority, subject to the dispute resolution procedures contained in Article 27. The Authority  
30 shall pay the amount of recoupment due within sixty (60) days of final resolution of the  
31 dispute.

32 5.14 Covenant of Good Faith and Fair Dealing. The Authority will provide that the  
33 DDA will be subject to, and the Parties agree that this Agreement is subject to a covenant of  
34 good faith and fair dealing.

## 35 **ARTICLE 6**

### 36 **CONTRACTS AND PERMITS**

37  
38  
39 6.1 The contracts, permits, licenses, permits or other agreements relating to Navy  
40 Property that Authority agrees to assume on each Parcel are limited to the following  
41 (the "Contract Assumption List")

specifically list the assignable contract, permits or agreements in this Section and delete exhibit].

At the Initial Closing, the Navy shall assign to the Authority the contracts, licenses, permits or other agreements listed in this Section 6.1.

## ARTICLE 7 EASEMENTS AND OTHER SIMILAR INSTRUMENTS

7.1 Easements or Other Similar Instruments. At each Closing, the Navy shall grant to the Authority or reserve to itself the following easements, licenses, rights of way, or other similar instruments, as applicable, and at locations mutually and reasonably agreeable to the Parties and adjusted from time to time.

### 7.1.1 Access Easements.

7.1.1.1 The Navy shall grant to the Authority non-exclusive easements, licenses, rights of way, or other similar instruments for ingress and egress on, over and across existing roads on Navy owned Parcels for pedestrian, vehicular and other access (the "**Road Easement**") as required to connect the Authority owned Parcels to each other and to connect the Authority owned Parcels to publicly accessible roads adjacent to the Navy owned Parcels (the "**Authority Access Easements**"). At the Initial Closing, the Authority Access Easements related to the FOST Parcel shall be granted for the area described in Exhibit I-4 attached hereto, or to the extent mutually agreed by the Parties, in the applicable Quitclaim Deeds or as a license, right of way, or other similar instrument. The Parties shall negotiate in good faith subsequent Authority Access Easements related to other Parcels prior to the subsequent Closing of each such Parcel.

7.1.1.2 The Navy may reserve to itself, its successors and assigns non-exclusive easements or other similar instruments for ingress and egress on, over and across existing roads on Parcels to be conveyed to the Authority for pedestrian, vehicular and other access as required to connect the Navy owned Parcels to each other, to connect the Navy owned Parcels to publicly accessible roads adjacent to the Parcel to be conveyed to the Authority ("**Navy Reserved Access Easement**"). The Navy may reserve non-exclusive easements or other similar instruments for access to third parties that own portions of the former Naval Station Treasure Island, which were previously disposed of and conveyed by the Navy, for ingress and egress on, over and across existing roads on Parcels to be conveyed to the Authority for pedestrian, vehicular and other access as required to connect third party owned parcels of real property to public roads adjacent to the Parcel to be conveyed to the Authority ("**Third Party Access Easement**"). The Navy Reserved Access Easement and Third Party Access Easement are collectively referred to as the "**Navy Access Easements**." Such Navy Access Easements shall be reserved or granted by the Navy substantially in conformance with the areas shown on Exhibit I-6.

7.1.1.3 The Authority Access Easements and Navy Access Easements shall include the following:



7.1.1.3.1 Each Party shall have the right, but not the obligation, to access, repair and maintain such roads, at its own expense, and to the extent that such access, repair or maintenance does not interfere with the development or the environmental remediation of any of its own property.

7.1.1.3.2 Use of existing roadways by the Parties to the Authority Access Easements or Navy Access Easements, or their successors or assigns, shall be at the sole cost and expense of said Parties, their successors and assigns, without any representation or warranty on the part of the Parties regarding the condition or state of repair of said roadways or any obligation to make, or liability for, any alterations, improvements, repairs or additions thereto.

7.1.1.3.3 The location of the Authority Access Easements and Navy Access Easements will be adjusted from time to time as necessary to accommodate the redevelopment activity. The Party on whose property the Authority Access Easements or Navy Access Easements exists (the "Owner Property") shall not redevelop, close, abandon, reconfigure or replace existing roadways within such easement in such a manner that would unreasonably interfere with the ability of the other Party to exercise its access rights to the easement except where the Party on whose property the Authority Access Easements or Navy Access Easements exists provides the other Party with suitable comparable alternative access over other areas of the Property. Where such redevelopment, closure, abandonment, reconfiguration or replacement is necessary to conduct actions required by the redevelopment that results in such roadway subject to this easement no longer providing the intended access or otherwise ceasing to exist, the Authority Access Easement or Navy Access Easements, as applicable, shall be moved from time to time to include, in the following order of priority either (i) access over other improved roads that may exist on the Owner Property, (ii) access over other unimproved roads that may exist on the Owner Property, or (iii) access over other unimproved portions of the Owner Property. The adjustment of the Access Easements shall be completed by revising the exhibits in the original Quitclaim Deeds or other applicable instruments with written approval by the Navy or the Authority. The approval will not be unreasonably withheld.

7.1.1.3.4 The Navy Access Easements shall continue until such time as final subdivision maps are recorded and attendant street dedications provide public access. The Authority Access Easements shall continue until such time as either the Parcel is owned by the Authority or final subdivision maps are recorded and attendant street dedications provide equivalent access.

7.1.2 Utility Easements. Prior to the Initial Closing and any subsequent Closing, as appropriate, the Navy shall grant to the Authority on Navy owned Parcels, or reserve to itself on Parcels being conveyed to the Authority, easements, licenses, rights of way, or other similar instruments for the operation and maintenance of existing utilities, and installation, operation and maintenance of all or portions of new utility systems on said Parcels ("Utility Easements"). Such Utility Easements on Navy owned Parcels may be provided pursuant to the Utility Agreement referenced in Article 9 hereof. Such Utility Easements on Parcels being conveyed to the Authority shall be reserved by the Navy substantially in

1 conformance with the areas shown on Exhibit I-3. The location of the Utility Easements will  
2 be adjusted from time to time as necessary to accommodate the redevelopment activity. The  
3 Party on whose property the Utility Easements exist (the "**Owner Property**") shall not  
4 redevelop, close, abandon, reconfigure or replace existing utilities within such easement in  
5 such a manner that would unreasonably interfere with the ability of the other Party to exercise  
6 its use of the utilities except where the Party on whose property the Utility Easements exists  
7 provides the other Party with suitable comparable alternative utility service and easements over  
8 other areas of the Property. Where such redevelopment, closure, abandonment, reconfiguration  
9 or replacement is necessary to conduct actions required by the redevelopment that results in  
10 such utility no longer providing the intended service or otherwise ceasing to exist, the Utility  
11 Easement, as applicable, shall be moved from time to time to include, in the following order of  
12 priority either (i) utilities in other improved roads that may exist on the Owner Property, (ii)  
13 utilities in other unimproved roads that may exist on the Owner Property, or (iii) utilities in  
14 other unimproved portions of the Owner Property. The adjustment of the Utility Easements  
15 shall be completed by revising the Exhibits in the original Quitclaim Deeds or other applicable  
16 instruments with written approval by the Navy or the Authority. The approval will not be  
17 unreasonably withheld.

18  
19 7.1.3 Assignable Easements. As part of the Initial Closing, the Navy shall  
20 assign to the Authority the assignable easements, leases, licenses and encroachment permits  
21 held by the Navy over, under, or through non-Navy owned property necessary for the  
22 operation, maintenance, or improvement of the Property, as listed on Exhibit I-1, attached  
23 hereto (the "**Assignable Easements**").

24  
25 7.2 Cost of Work on the Easements. The cost of any work and improvements on the  
26 easements shall be borne entirely by the Party undertaking such work, except to the extent agreed  
27 to in writing by the Parties. The cost of the preparation of surveys and legal descriptions of the  
28 easements shall be borne by the requesting Party, except to the extent agreed to in writing by the  
29 Parties.  
30  
31

## 32 **ARTICLE 8**

### 33 **CLOSING AND SETTLEMENT**

34

35 8.1 Opening of Escrow. On or before the Effective Date of this Agreement, the  
36 Parties shall open escrow by depositing an executed copy of this Agreement with Title  
37 Company. The Parties agree to jointly develop escrow instructions for the Initial Closing and  
38 each subsequent Closing, if applicable. The Authority shall deposit the agreed upon escrow  
39 instructions with the Title Company that shall serve as the instructions to the Title Company, as  
40 the escrow holder, for each of the Closings contemplated hereby. The Navy and the Authority  
41 agree to execute such additional escrow instructions as may be appropriate to enable the Title  
42 Company to comply with the terms of this Agreement; provided, however, that in the event of  
43 any conflict between the provisions of this Agreement and any supplementary escrow  
44 instructions, the terms of this Agreement shall control.  
45

1           8.2    Navy Deliveries. The Navy shall deliver to escrow at least five (5) days prior to  
2 the Initial Closing and each subsequent Closing the following documents, as applicable ("Navy  
3 **Closing Documents**"), in a form previously reviewed and approved by the Authority, and duly  
4 executed and authorized (and acknowledged if necessary for recordation):  
5

6           8.2.1   Quitclaim Deed(s) substantially in the form as set forth in Exhibit D-1  
7 and Exhibit D-2, as applicable, attached hereto.  
8

9           8.2.2   Final FOST(s), as appropriate for such Parcel(s) to be conveyed at such  
10 Closing that meet the conditions of Section 3.4, and copies of all Regulatory Authority  
11 approvals obtained for the applicable Parcel relating to the investigation and environmental  
12 response for underground and above-ground petroleum storage tanks, and any releases of  
13 petroleum, petroleum derivatives, petroleum fractions, or any chemicals, compounds or  
14 products that result from their degradation that meet the conditions of Article 18.  
15

16           8.2.3   Bill of Sale for the Navy Personal Property conveyed to the Authority  
17 for such Parcel(s), in substantially the form set forth in Exhibit H-1.  
18

19           8.2.4   Any appropriate instrument(s) assigning the Assumed Contracts and  
20 copies of the Assumed Contract(s), as applicable.  
21

22           8.2.5   Any Access Easement(s) required by the Authority relating to such  
23 Parcel(s), in accordance with this Agreement, which shall be substantially in the form set forth  
24 in Exhibit I-4.  
25

26           8.2.6   Any Utility Easement(s) required by the Authority relating to such  
27 Parcel(s), in accordance with this Agreement, which shall be substantially in the form set forth  
28 in Exhibit I-3.  
29

30           8.2.7   Any appropriate instruments assigning the Assignable Easement(s)  
31 required by the Authority in accordance with this Agreement, which shall be substantially in  
32 the form set forth in Exhibit I-2.  
33

34           8.2.8   Any appropriate instruments assigning or replacing the Non-Assignable  
35 Easements and perfecting the Unperfected Easements necessary for electricity to be provided  
36 to Treasure Island as required by Section 3.7.1.8 hereof that the Navy has obtained.  
37

38           8.2.9   Any LIFO, easements, or other instruments that may be required under  
39 Section 3.12.  
40

41           8.2.10   A Utilities Agreement or subsequent amendments, as the case may be, as  
42 set forth in Article 9, as applicable.  
43

44           8.2.11   The Land Use Covenant, as applicable.  
45

1           8.2.12 Such additional documents as may be required to close escrow, under  
2 this Agreement or by California law.  
3

4  
5           8.2.13 Representation to the Authority, in substantially the form set forth in  
6 Exhibit N-1, stating that as of the date of Closing, the Navy has the full capacity, right, power,  
7 and authority to execute, deliver, and perform this Agreement pursuant hereto for the Closing  
8 unless subsequently prohibited by law.  
9

10           8.3    **The Authority Deliveries.** The Authority shall deliver to escrow at least five (5)  
11 days prior to the Initial Closing and, to the extent applicable, each subsequent Closing, the first  
12 Installment Payment of the Initial Consideration payable in accordance with Section 4.2 and the  
13 following documents in a form previously reviewed and approved by the Navy, and duly  
14 executed and authorized (and acknowledged if necessary for recordation) (the "**Authority**  
15 **Closing Documents**"):  
16

17           8.3.1 Acceptance of Quitclaim Deed(s) substantially as set forth in Exhibit D-  
18 1 and Exhibit D-2, as applicable, attached hereto.  
19

20           8.3.2 Acceptance of the assignment of the Assumed Contracts substantially in  
21 the form attached hereto as Exhibit BB.  
22

23           8.3.3 Any LIFO, easements, or other instruments that may be required under  
24 Section 3.12.  
25

26           8.3.4 A Utilities Agreement, or subsequent amendments, as the case may be,  
27 as set forth in Article 9, as applicable.  
28

29           8.3.5 Any appropriate instruments assigning or replacing the Non-Assignable  
30 Easements and perfecting the Unperfected Easements necessary for electricity to be provided  
31 to Treasure Island as required by Section 3.7.1.8 hereof that the Authority has obtained.  
32

33           8.3.6 Acceptance of any Access Easement(s) required by the Authority  
34 relating to such Parcel(s) in accordance with this Agreement, which shall be substantially in the  
35 form set forth in Exhibit I-4, attached hereto.  
36

37           8.3.7 Acceptance of any Utility Easement(s) required by the Authority relating  
38 to such Parcel(s) in accordance with this Agreement, which shall be substantially in the form  
39 set forth in Exhibit I-3, attached hereto.  
40

41           8.3.8 Acceptance of any Assignable Easement(s), Non-Assignable Easements  
42 and the Unperfected Easements required by the Authority relating to such Parcel(s), in  
43 accordance with this Agreement, which shall be substantially in the form set forth in Exhibit I-  
44 1, attached hereto.  
45

8.3.9 Such additional documents as may be required to close escrow, under this Agreement or by California law.

8.3.10 Representation to the Navy, in substantially the form set forth in Exhibit N-2, stating that as of the date of Closing, the Authority has the full capacity, right, power, and authority to execute, deliver, and perform this Agreement pursuant hereto for the Closing unless subsequently prohibited by law.

## ARTICLE 9 UTILITIES AGREEMENT

9.1 Without limiting the Parties' obligations under this Agreement, the Parties shall execute and enter into an agreement that addresses ownership and use of existing utilities by the Parties in light of the Parties separate ownership of the different Parcels of the Navy Real Property (a "Utilities Agreement"). The Parties shall enter into a Utilities Agreement related to the conveyance of the FOST Parcel in substantially the form attached hereto as Exhibit EE at the Initial Closing and shall enter into amendments thereto (pursuant to the terms of the Utilities Agreement) at each subsequent Closing, as necessary. **[N.B; This section will be fleshed out with the assistance of the utilities working group]**

## ARTICLE 10 TIME OF THE ESSENCE AND POSTPONEMENT

10.1 Time is of the Essence. The Parties agree that a fundamental component of this Agreement is the timely disposal of the Navy Real Property by the Navy, which will permit the economic redevelopment of the Navy Real Property. Accordingly, the Parties agree that time is of the essence in this Agreement.

10.2 Postponement. A party who is subject to Excusable Delay in the performance of an obligation hereunder (including, without limitation, compliance with the Conveyance Schedule), or in the satisfaction of a condition to the other Party's performance hereunder, shall be entitled to a postponement of the time for performance of such obligation or satisfaction of such condition during the period of enforced delay attributable to an event of Excusable Delay.

10.2.1 Notice of Excusable Delay. The Excusable Delay provisions of this Section shall not apply unless (x) the Party seeking to rely upon such provisions shall have given notice to the other Party as soon as reasonably possible, but in no event later than the earlier of (i) thirty (30) days after obtaining knowledge of the beginning of an Excusable Delay or (ii) the deadline for performance of the term, covenant or condition of this Agreement that is subject to the Excusable Delay, of such delay and the cause or causes thereof, to the extent known, and (y) the Party claiming the Excusable Delay must at all times be acting diligently and in good faith to avoid foreseeable delays in performance, and to remove the cause of the delay or to develop a reasonable alternative means of performance.

10.2.2 Extensions. Either Party may extend time for the other Party's performance of any term, covenant or condition of this Agreement or permit the curing of any

1 default upon such terms and conditions as it determines appropriate; provided, however, that  
2 any such extension or permissive curing of any particular default shall not operate to release  
3 any of the other Party's obligations, nor constitute a waiver of the extending Party's rights with  
4 respect to any other term, covenant or condition of this Agreement or any other breach of this  
5 Agreement. The Parties may extend the time for performance by either or both Parties of any  
6 term, covenant or condition of this Agreement by a written instrument signed by authorized  
7 representatives of both Parties without the execution of an amendment to this Agreement.  
8

## 9 **ARTICLE 11** 10 **ENVIRONMENTAL REPORTS**

11  
12 11.1 From and after the Effective Date, the Navy will make available to the Authority  
13 all known Environmental Reports prepared by or for the Navy with respect to the Navy Real  
14 Property that is subject to the Closing. The Authority and its agents, its successors, and its  
15 transferees, at their own expense, shall have the right to inspect, review, and copy any or all of  
16 the Environmental Reports within a reasonable timeframe of providing notice to the Navy.  
17

18 11.2 The CERCLA administrative record component of the Environmental Reports  
19 shall be indexed and an up-to-date copy of the index and the location of the records shall be  
20 provided to the Authority prior to each Closing, at no cost to the Authority. The administrative  
21 record shall be maintained by the Navy in the San Diego area or at another location at or  
22 proximate to the Navy Real Property.  
23

24 11.3 The CERCLA administrative record will be maintained by the Navy for a period  
25 of ten (10) years following the date that the last Parcel is transferred to the Authority.  
26  
27

## 28 **ARTICLE 12** 29 **DELIVERY OF THE NAVY REAL PROPERTY DOCUMENTS**

30 12.1 From and after the Effective Date, the Navy will make available to the Authority  
31 for inspection and copying those surveys, soils and geological reports, studies, assessments, test  
32 results, well close-out reports, leases, licenses, easements, permits, contracts and other  
33 documents relating to the physical or structural composition of the Navy Real Property including  
34 plans and specifications for buildings and other improvements, drawings of underground utility  
35 systems (including gas, sewer, water, electrical, and telephone), personal property (including  
36 executed and completed motor vehicle transfer of ownership forms) and any and all other  
37 documents of material significance to the ownership, use, management or operation of the Navy  
38 Real Property ("Navy Real Property Documents") which are physically located at the  
39 following repositories: (1) Building 1, Treasure Island, and (2) Southwest Division of the Naval  
40 Facilities Engineering Command, San Diego, California. The Navy shall permit access to the  
41 Authority to the identified repositories and such other locations that may be subsequently  
42 identified for inspection and copying of any Navy Real Property Documents available to the  
43 Navy that are identified by the Authority related to the Navy Real Property. The Authority and  
44 its transferees and agents, at their own expense, shall have the right to inspect, review, and copy  
45 any or all of the Navy Real Property Documents with reasonable prior notice to the Navy.  
46 Nothing herein shall require the Navy to release information, documents, or databases to the



1 Authority or other parties that would be contrary to the Freedom of Information Act, that are  
2 privileged, or that would be in violation of federal law.

### 3 4 **ARTICLE 13** 5 **NAVY CARETAKER SITE OFFICE** 6

7 13.1 Commencing on the date of the Initial Closing and continuing until the date that is  
8 seven (7) years after the Initial Closing (unless terminated earlier by Navy), the Navy shall have  
9 the right to occupy up to three thousand five hundred (3,500) square feet of office space and up  
10 to two thousand (2,000) square feet of space for file storage, which file storage may be located  
11 in non-contiguous or non-adjacent spaces, for use as a Navy caretaker site office (the "Navy  
12 Office") and six reserved parking spaces. At the Initial Closing, the Navy Office will continue to  
13 be located in Building 1, as more particularly shown on Exhibit K-1 attached hereto and to the  
14 extent practicable, Navy shall be permitted to remain in its presently existing office space until  
15 such space is required for implementation of the Project. The terms of occupancy for the Navy  
16 Office shall be substantially in the form of Exhibit K-2 attached hereto ("Navy Office  
17 Agreement"). Navy shall be responsible for its cost of utilities serving the Navy Office, but the  
18 Navy Office Agreement shall otherwise be rent free for the seven (7) year period. The Authority  
19 shall have the right, from time to time during the Navy Office Agreement term, to relocate the  
20 Navy Office to another location within Building 1 or to one of the buildings known as the Great  
21 Whites as more particularly shown on Exhibit K-3 attached hereto, or to any other adequate  
22 location on Treasure Island or Yerba Buena Island, by giving Navy no less than three (3)  
23 months' prior written notice. The relocation premises shall be substantially equivalent in size  
24 and dimensions to the then-existing premises but while the office space shall be contiguous, the  
25 relocated storage space may be located in one or more non-contiguous spaces. The Authority  
26 shall bear any reasonable costs incurred by the Authority to physically relocate Navy to any  
27 relocation space, and shall be responsible for the cost of standard tenant improvements for the  
28 relocation consistent in quality with the Navy's current space in Building 1. Navy shall be  
29 entitled at any time upon thirty (30) days prior written notice to terminate the Navy Office. At  
30 the expiration of the initial seven (7) year occupancy period, the Navy may elect to terminate the  
31 Navy Office Agreement, or to renew the Navy Office Agreement at fair market rent, to be  
32 determined by the Authority based on the highest and best use permitted for the occupied space.

33  
34 13.2 All personal property associated with the Navy Office shall be excluded from  
35 transfer until such time as the Navy Office Agreement is terminated. Upon Navy Office  
36 Agreement termination, the Navy upon its sole right shall determine excess personal property to  
37 be made available to the Authority.  
38

### 39 **ARTICLE 14** 40 **NAVY REPRESENTATIONS** 41

42 14.1 The Navy hereby represents to the Authority on and as of the Effective Date and  
43 will represent as of the date of each Closing as follows:  
44

45 14.1.1 Execution of Agreement. That the Navy has full capacity, right, power  
46 and authority to execute, deliver and perform this Agreement and all documents to be executed

1 by the Navy pursuant hereto, and all required action and approvals therefor have been duly  
2 taken and obtained for the execution of this Agreement. The Navy further represents to the  
3 Authority that as of the date of Closing, the Navy shall have full capacity, right, power and  
4 authority to execute, deliver and perform this Agreement and all documents to be executed by  
5 the Navy pursuant hereto for the Closing unless subsequently prohibited by law. This  
6 Agreement and all documents to be executed pursuant hereto by the Navy are and shall be  
7 binding upon and enforceable against the Navy in accordance with their respective terms.  
8

9 14.1.2 Complete Information. All known relevant Environmental Reports and  
10 Navy Real Property Documents of material significance have been made available to the  
11 Authority for inspection and copying.  
12

## 13 ARTICLE 15 14 AUTHORITY REPRESENTATIONS 15

16 15.1 The Authority hereby represents to the Navy that on and as of the Effective Date,  
17 the Authority has full capacity, right, power and authority to execute, deliver and perform this  
18 Agreement and all documents to be executed by the Authority pursuant hereto, and all required  
19 action and approvals therefor have been duly taken and obtained for the execution of this  
20 Agreement. The Authority further represents to the Navy that as of each Closing, the Authority  
21 shall have full capacity, right, power and authority to execute, deliver and perform this  
22 Agreement and all documents to be executed by the Authority pursuant hereto, and all required  
23 action and approvals will have been duly taken and obtained for the Closing. The individuals  
24 signing this Agreement and all other documents executed or to be executed pursuant hereto on  
25 behalf of the Authority shall be duly authorized to sign the same on the Authority's behalf and to  
26 bind the Authority thereto. This Agreement and all documents to be executed pursuant hereto by  
27 the Authority are and shall be binding upon and enforceable against the Authority in accordance  
28 with their respective terms.  
29

## 30 ARTICLE 16 31 TITLE AND NAVY COVENANTS 32

33 16.1 From the Effective Date to the Closing, the Navy shall not do, permit, or agree to  
34 sell, encumber or grant any interest in the Navy Property or any part thereof in any form or  
35 manner whatsoever or otherwise perform or permit any act which will diminish or otherwise  
36 affect the Authority's interest under this Agreement or in or to the Navy Property or which will  
37 prevent the Navy's full performance of its obligations hereunder, without the prior written  
38 consent of the Authority except environmental restrictions or land use covenants consistent with  
39 Section 3.4.2 as may be designated in the CERCLA Record of Decision, an approved Corrective  
40 Action Plan or the FOST.  
41

42 16.2 The Navy shall not remove or alter any Navy Personal Property or Utility  
43 Infrastructure that is intended to be transferred by this Agreement to the Authority, without the  
44 prior written consent of the Authority, except when such removals or alterations are in  
45 association with the Navy's continuing obligations under CERCLA, 42 U.S.C. § 9601, et seq.  
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**ARTICLE 17**  
**ENVIRONMENTAL PROVISIONS**

17.1 Navy Obligations Under 42 U.S.C. § 9620(h) of CERCLA. The Navy Real Property shall be conveyed subject to the Navy's obligations with regard to Hazardous Substances as set forth in CERCLA at 42 U.S.C. § 9620(h)(3).

17.2 CERCLA Access. The Quitclaim Deeds shall include a clause granting the United States access rights to the Navy Real Property pursuant to Section 120(h)(3)(A)(iii) of CERCLA at 42 U.S.C. § 9620(h)(3)(A)(iii) in any case in which remedial action or corrective action is found to be necessary after the date of Transfer.

17.3 Lead-Based Paint. The Quitclaim Deeds shall incorporate the Lead-Based Paint (hereinafter referred to as "LBP") Disclosure and restrictions required by 40 CFR § 745.113, if applicable, and other applicable authority. The Parties agree that the Authority, or its successors or assigns, will seek approval of a procedure through the State of California whereby once the LBP is removed from the Navy Real Property in compliance with Federal and State standards, the LBP Disclosure and restrictions can be removed from the Quitclaim Deeds in accordance with the approved procedure. The Navy agrees to cooperate with such procedure upon approval by the State of California, and, if applicable, sign all amended Quitclaim Deeds as necessary.

17.4 Asbestos. The Quitclaim Deeds shall include any notifications or restrictions concerning asbestos or asbestos-containing materials ("ACM") that have been found on the Navy Real Property, as described in the [report name] dated the \_\_ day of \_\_, 20XX, if applicable. The Parties agree that the Authority, or its successors or assigns, will seek approval of a procedure through the State of California, whereby once the ACM is removed from the Navy Real Property in compliance with Federal and State standards, the ACM notification and any other ACM reference can be removed from the Quitclaim Deeds in accordance with the approved procedure. The Navy agrees to cooperate with such procedure upon approval by the State of California, and, upon removal, if applicable, sign all amended Quitclaim Deeds as necessary.

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**ARTICLE 18**  
**PETROLEUM CORRECTIVE ACTION**

18.1 The Navy represents that as of the Effective Date, it has satisfied all requirements, obligations and objectives included in the FFSRA and the current Petroleum Corrective Action Plan as they relate to petroleum products, underground and above ground storage tanks and related piping, petroleum derivatives, fractions and daughter products (collectively, "Petroleum Products"), except for YF-3, Site 25 and Site 6, which shall be governed by Section 18.2 hereof.

18.2 The Navy shall satisfy all requirements, obligations and objectives included in the FFSRA and the current Petroleum Corrective Action Plan as they relate to Petroleum Products related to YF-3, Site 25 and Site 6 prior to Closing for those parcels.

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3 **ARTICLE 19**  
4 **COVENANT AGAINST CONTINGENT FEES**

5 19.1 The Authority warrants that no person or agency has been employed or retained to  
6 solicit or secure this Agreement upon an agreement or understanding for a commission,  
7 percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established  
8 commercial agencies maintained by the Authority for the purpose of securing the successful  
9 purchase of the Navy Property by the Authority. "Bona fide established commercial agencies"  
10 has been construed to include licensed real estate brokers engaged in the business generally. For  
11 breach or violation of the warranty, Navy has the right to annul this Agreement without liability  
12 or in its discretion to require the Authority to pay, in addition to the consideration, the full  
13 amount of such commission, percentage, brokerage, or contingent fee.  
14

15 **ARTICLE 20**  
16 **NOTICES**

17  
18 20.1 Notices shall be deemed sufficient under this Agreement if made in writing and  
19 delivered personally (including by messenger) or sent by United States registered or certified  
20 mail, return receipt requested, postage prepaid, or by courier, postage prepaid and addressed to  
21 the Parties at their respective addresses set forth below (or to any new or substitute address  
22 hereinafter specified, in a writing theretofore delivered in accordance with the notice procedure  
23 set forth herein by the intended recipient of such notice), and the same shall be effective upon  
24 receipt, if delivered personally or by messenger, or two (2) business days after deposit in the mail  
25 if mailed:  
26

27 If to the Authority: Treasure Island Development Authority  
28 City and County of San Francisco  
29 City Hall, Room 448  
30 1 Dr. Carlton B. Goodlett Place  
31 San Francisco, CA 94102-410  
32 Attn:  
33 Telephone:  
34 Facsimile:  
35 Email:  
36

37 With a copy to: Office of the City Attorney  
38 City and County of San Francisco  
39 City Hall, Room 448  
40 1 Dr. Carlton B. Goodlett Place  
41 San Francisco, CA 94102  
42 Attn: Eileen Malley, Deputy City Attorney  
43 Telephone: (415) 554-6781  
44 Facsimile: (415) 554-4755  
45 Email: eileen.malley@sfgov.org  
46

1 With a copy to: George R. Schlossberg, Esq.  
2 Kutak Rock LLP  
3 1101 Connecticut Avenue, N.W.  
4 Suite 1000  
5 Washington, DC 20036  
6 Telephone: (202) 828-2418  
7 Facsimile: (202) 828-2488  
8 Email: george.schlossberg@kutakrock.com  
9

10 If to the Navy: Base Realignment and Closure  
11 Program Management Office West  
12 1455 Frazee Road  
13 Suite 900  
14 San Diego, California 92108-4310  
15 Attn: Douglas Gilkey  
16 Telephone: (619) 532-0949  
17 Facsimile: (619) 532-0983  
18 Email: douglas.gilkey@navy.mil  
19

20 With a copy to: Base Realignment and Closure  
21 Office of Counsel  
22 1455 Frazee Road  
23 Suite 900  
24 San Diego, California 92108-4310  
25 Attn:  
26 Telephone:  
27 Facsimile:  
28 Email:  
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30 20.2 Either Party may direct in writing that any notices be sent to additional parties.  
31 The provision of notice to additional parties shall not make such additional parties third party  
32 beneficiaries of this Agreement.  
33

## 34 ARTICLE 21 35 PRIOR LIABILITIES

36  
37 21.1 To the extent provided by law, the Navy shall remain responsible for all  
38 liabilities, claims, demands, judgments, suits, litigation, amounts payable (collectively, "**Pre-**  
39 **Closing Obligations**") against the Navy attributable to the Navy's construction, installation,  
40 placement, operation, maintenance, misuse, abandonment or failure to maintain the buildings and  
41 equipment and land during the period prior to the conveyance of the Navy Real Property to the  
42 Authority pursuant to this Agreement, and with regard to a separate lease, contract for caretaker  
43 services, or other agreement, the Navy's responsibility and the Authority's responsibility for Pre-  
44 Closing Obligations will be as set forth in those documents. Except as otherwise provided in the  
45 Quitclaim Deeds, the Authority shall notify the Navy of the existence or occurrence of any such  
46 Pre-Closing Obligations of which it has knowledge sufficiently in advance of the scheduled

1 Closing date to allow disposition thereof, if necessary, and shall cooperate with the Navy in the  
2 disposition thereof prior to the scheduled Closing date.

## 3 4 **ARTICLE 22** 5 **AUTHORITY'S AVAILABILITY OF FUNDS**

6  
7 22.1 Except for the Authority's recoupment obligations as set forth in Section 5.13.3  
8 and the Authority's obligation to provide security for the payment of the Initial Consideration as  
9 set forth in Section 4.2.6 of this Agreement, there shall be no obligation for the payment or  
10 expenditure of money by the Authority under this Agreement unless there is a valid  
11 appropriation from which the expenditure may be made and that unencumbered funds are  
12 available from the appropriation for the expenditure.

## 13 14 **ARTICLE 23** 15 **FINALITY OF CONVEYANCE**

16  
17 23.1 Possession. Upon each Closing, the Navy shall immediately deliver to the  
18 Authority possession of the Navy Real Property conveyed at the Closing.

19  
20 23.2 No Right of Rescission. There shall be no right of rescission in the Navy as to the  
21 Navy Real Property, or any portion thereof, once conveyed to the Authority. The foregoing shall  
22 not be interpreted to limit any future exercise of the power of eminent domain by the Navy.

## 23 24 **ARTICLE 24** 25 **LIABILITY FOR ENVIRONMENTAL CONTAMINATION**

26  
27 24.1 Notwithstanding any other provision of this Agreement, and except as set forth  
28 specifically in any Quitclaim Deeds, leases, licenses, and the Caretaker Agreement, or other  
29 agreement between the Authority and the Government, the Authority does not hereby assume  
30 any liability or responsibility for environmental impacts and damage caused by the use of  
31 Hazardous Substances and petroleum products by the United States, its contractors, agents or  
32 assignees, on any Parcel or adjacent to it prior to the date of conveyance. The Authority has no  
33 obligation under this Agreement to undertake the defense of any claim or action, whether in  
34 existence now or brought in the future, or to conduct any cleanup or remediation action arising  
35 out of the use or release of any Hazardous Substances or petroleum products, on or from any part  
36 of the Property to the extent such claim or action arises out of activity by: (i) the United States  
37 on the Property or adjacent to it, or (ii) during the United States' ownership of the Property  
38 except as provided under leases, licenses, and the Caretaker Agreement entered into between the  
39 Authority and the Navy prior to the Effective Date; nor does the Authority hereby waive or  
40 release any rights it may have under applicable law against the Government with respect to such  
41 claims, actions, cleanup or remedial action.

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**ARTICLE 25**  
**SHORT FORM NOTICE**

25.1 Upon execution of this Agreement, the Authority and Navy shall execute the Short Form Notice of Conveyance attached hereto as Exhibit M. The Short Form Notice of Conveyance shall be recorded in the Official Records of the City of San Francisco immediately following the execution of this Agreement. The Short Form Notice of Conveyance shall include the following language: From the Effective Date of this Agreement through the Initial Closing and any subsequent Closings, the Navy shall not permit, agree to sell, encumber or grant any interest in the Navy Real Property or any part thereof in any form or manner whatsoever, or otherwise perform or permit any act that will diminish or otherwise affect the Authority's interest under this Agreement or to the Navy Real Property, or which will prevent the Navy's full performance of its obligations hereunder, without the written consent of the Authority, except environmental restrictions or land use covenants consistent with the Agreement as may be designated in the CERCLA Record of Decision, an approved Corrective Action Plan or the FOST.

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**ARTICLE 26**  
**FURTHER ASSURANCES**

26.1 The Parties acknowledge that it is their mutual intent to effectuate an orderly, amicable, and expeditious transfer of the Navy Real Property from Navy to the Authority and that, toward that end, (i) any or all ambiguities herein shall, to the extent practicable, be construed in the way most liberally conducive to the aforesaid conveyance, (ii) neither Party shall be considered the drafter of this Agreement or any of its provisions for the purposes of any statute, case law, or rule of interpretation or construction, that would or might cause any provision to be construed against the drafter of the Agreement, and (iii) the Parties agree to execute, deliver and perform under the terms of such other documents as their respective legal counsel may deem necessary or appropriate to effect the purposes of this Agreement.

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**ARTICLE 27**  
**DISPUTE RESOLUTION PROCEDURES**

27.1 Resolution of Certain Disputes. Any other provision of this Agreement notwithstanding, (i) disputes identified in Section 27.3.2 shall be resolved by non-binding arbitration in accordance with the expedited dispute resolution procedure set forth in Section 27.3.2, and (ii) such other disputes under this Agreement shall be resolved either by non-binding arbitration in accordance with the non-binding arbitration procedures set forth in Section 27.3.3 if the Parties mutually agree, or barring such mutual agreement as to a particular other dispute, in accordance with this Agreement and all applicable laws.

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27.2 Good Faith Meet and Confer Requirement.

27.2.1 With respect to any dispute regarding a matter identified in Section 27.3.2, the Parties shall make a good faith effort to resolve the dispute prior to non-binding

1 arbitration. Within five (5) business days after a request to confer regarding an identified  
2 matter, representatives of the Parties who are vested with decision-making authority shall meet  
3 to resolve the dispute. If the Parties are unable to resolve the dispute at the meeting, the matter  
4 shall immediately be submitted to the expedited dispute resolution process set forth in Section  
5 27.3.2.

6 27.2.2 With respect to any other dispute arising hereunder, the Parties shall  
7 make a good faith effort to resolve the dispute in the most expeditious manner possible.  
8 Within five (5) business days after receipt of the notice of dispute, representatives of the  
9 affected Parties shall meet to resolve the dispute. If the Parties are unable to resolve the  
10 dispute in good faith within ten (10) business days after receipt of the notice of dispute, the  
11 Parties shall either agree within ten (10) business days after receipt of the notice of dispute to  
12 proceed with the non-binding arbitration procedures set forth in Section 27.3.3, or barring such  
13 agreement, either Party may proceed unilaterally as permitted by this Agreement or by law.

#### 14 27.3 Dispute Resolution Procedures.

15 27.3.1 Arbiters. The non-binding arbitrator ("**Arbiter**") will be selected  
16 by mutual agreement of the parties to be determined no later than thirty (30) days prior to the  
17 Initial Closing from a list of at least six (6) and up to ten (10) pre-approved Arbiters from the  
18 list attached hereto as Exhibit GG (the "**Pre-Approved Arbiters List**"). The Arbiter will hear  
19 all disputes under this Agreement unless the Arbiter is not available to meet the time schedule  
20 set forth herein, in which case the Parties may agree to direct the dispute to another Arbiter on  
21 the Pre-Approved Arbiters List. If none of the Arbiters listed is able or willing to serve, the  
22 parties shall mutually agree on the selection of an Arbiter to serve for the purposes of this  
23 dispute. The Arbiter appointed must meet the Arbiters' Qualifications. The "**Arbiters'**  
24 **Qualifications**" shall be defined as at least ten (10) years experience in a real property  
25 professional capacity, such as a real estate appraiser, broker, real estate economist, or attorney,  
26 in the Bay Area. The Parties shall review the Pre-Approved Arbiters List on an annual basis,  
27 determine the continued availability and willingness to serve of each Arbiter, and may at that  
28 time or from time to time, seek to add or subtract arbiters from the Pre-Approved Arbiter List,  
29 by notice in writing to the other Party. Any such notice will be accompanied by supporting  
30 documentation of the new proposed Arbiter's qualifications or with the reasons for seeking to  
31 remove an Arbiter from the Pre-Approved Arbiters List, as applicable. The other Party shall  
32 have fifteen (15) business days to respond in writing to such request, and failure to respond  
33 shall be deemed consent. If the other Party objects, the Parties shall confer pursuant to Section  
34 27.2.2 and thereafter such disputes (if still unresolved after conferring) shall be referred to  
35 arbitration pursuant to Section 27.3.2. Notwithstanding the foregoing, if based upon the annual  
36 review or at any time during the Term, the Parties become aware that an Arbiter has become  
37 unavailable to serve in any prospective Arbitration or has expressed an unwillingness to  
38 continue to serve, the Parties shall replace that Arbiter with a new Arbiter mutually agreed-  
39 upon by the Parties.

40 27.3.2 Expedited Dispute Resolution Procedure. The Parties hereby agree that  
41 the following disputes shall be subject to this expedited dispute resolution procedure: (i) Major  
42 Phase Decisions (pursuant to Section 5.6 hereof); (ii) proposed amendments to appraisal  
43 instructions (pursuant to Section 5.4 hereof); (iii) proposed additions or subtractions to the



1 Qualified Appraiser Pool (pursuant to Section 5.4.1 hereof); (iv) proposed additions or  
2 subtractions to the Pre-Approved Arbiters List (pursuant to Section 27.3.1); (v) disputes related  
3 to Redesign Work Program and Costs (pursuant to Section 4.2.4); or (vi) any matter the  
4 Authority in its reasonable discretion believes has the potential to materially delay the Project.

5           27.3.2.1 The Party(ies) disputing any matter subject to this expedited  
6 dispute resolution procedure shall, within five (5) business days after submittal of the dispute to  
7 non-binding arbitration, submit a brief with all supporting evidence to the Arbiter with copies to  
8 all Parties. Evidence may include, but is not limited to, expert or consultant opinions, any form  
9 of graphic evidence, including photos, maps or graphs and any other evidence the Parties may  
10 choose to submit in their discretion to assist the Arbiter in resolving the dispute. In either case,  
11 any interested Party may submit an additional brief within three (3) business days after  
12 distribution of the initial brief. The Arbiter thereafter shall hold a telephonic hearing and issue a  
13 decision in the matter promptly, but in any event within ten (10) business days after the initiation  
14 of the non-binding arbitration, unless the Arbiter determines that further briefing is necessary, in  
15 which case the additional brief(s) addressing only those items or issues identified by the Arbiter  
16 shall be submitted to the Arbiter (with copies to all Parties) within five (5) business days after the  
17 Arbiter's request, and thereafter the Arbiter shall hold a telephonic hearing and issue a decision  
18 promptly but in any event within two (2) business days after submission of such additional  
19 briefs, and no later than seventeen (17) business days after the initiation of the non-binding  
20 arbitration. Each Party will give due consideration to the Arbiter's decision prior to pursuing  
21 further legal action, which decision to pursue further legal action shall be made in each Party's  
22 sole and absolute discretion.

### 23           27.3.3 Non-Binding Arbitration Process for Other Disputes.

24           27.3.3.1 Election to Participate in Non-Binding Arbitration. If the  
25 dispute is arising under this Agreement and is not otherwise subject to Section 27.3.2, and the  
26 Parties so agree in accordance with Section 27.2.2, the Parties shall submit the dispute to non-  
27 binding arbitration by notifying the Arbiter (selected as described in Section 27.3.1) of the  
28 dispute within ten (10) business days after expiration of the good faith meet and confer  
29 provisions of Section 27.2. Thereafter, within ten (10) business days, each Party to the dispute  
30 shall submit to the Arbiter and serve on the other Party to the non-binding arbitration a short  
31 statement of the dispute and a proposed discovery and hearing schedule.

32           27.3.3.2 Preliminary Hearing. Within twenty (20) business days after  
33 notice of the election to participate in non-binding arbitration, the Arbiter shall conduct, either  
34 telephonically or in-person, a preliminary hearing. At the preliminary hearing the Arbiter shall  
35 decide discovery and briefing issues and set dates, including a hearing date. In resolving  
36 discovery issues, the Arbiter shall consider expediency, cost effectiveness, fairness, and the  
37 needs of the Parties for adequate information with respect to the dispute.  
38

39           27.3.3.3 Retention of Consultants. The Parties by mutual agreement  
40 may retain consultants to assist the Arbiter in the course of Arbitration, if requested by the  
41 Arbiter. In his or her request, the Arbiter shall provide to all Parties to the dispute an explanation  
42 for the need for the consultant, the consultant's identity, hourly rate, and the estimated costs of



the service. All Parties to the dispute must approve the retention of the consultant and, if retention of the consultant is approved, Authority, or Developer on behalf of Authority, shall contract with, if necessary, and pay the costs of the consultant, subject to the provisions regarding fees and costs set forth in Section 27.3.5 below. The consultant's cost shall not exceed \$10,000 without the prior written consent of the Parties to the dispute. All consultant costs paid by Authority that are not credited against Initial or Additional Consideration in accordance with Section 27.3.5 below shall be included as Development Costs in calculating the Additional Consideration.

27.3.3.4 Commencement of Non-Binding Arbitration. The non-binding arbitration hearing shall commence no later than sixty (60) days after the initial preliminary hearing, unless the Parties to the dispute mutually agree to extend the date or the Arbitrator extends the date.

27.3.3.5 Additional Procedural Requirements. The procedural rules of the non-binding arbitration under Section 27.3.3 shall be supplemented by any non-conflicting non-binding arbitration procedures of other alternative dispute resolution providers as may be mutually agreed upon by the Parties from time to time, applicable to commercial non-binding arbitration, and may be modified by agreement of the Parties.

27.3.3.6 Decision of Arbitrator. The Arbitrator shall make a written non-binding advisory decision, specifying the reasons for the decision, within twenty (20) calendar days after the hearing. Each Party will give due consideration to the Arbitrator's decision prior to pursuing further legal action, which decision to pursue further legal action shall be made in each Party's sole and absolute discretion.

27.3.3.7 Time Period to Complete Non-binding Arbitration. The non-binding arbitration shall be completed within eighty (80) calendar days of the preliminary hearing, unless the parties to the dispute mutually agree to extend the date or the Arbitrator extends the date.

#### 27.3.4 Additional Provisions Governing Non-binding Arbitration of Disputes.

27.3.4.1 Disputes Involving Arbitrability of Disputes. The Arbitrator shall decide any dispute involving either the right to have a disputed matter submitted to non-binding arbitration or whether the matter is properly the subject of the expedited dispute resolution procedure pursuant to Section 27.3.2. The Parties to such dispute shall provide notice of the dispute and submit in writing their respective positions regarding the dispute to the Arbitrator. No such submission shall exceed ten double spaced pages. The Arbitrator shall make his or her decision within five (5) days of the last submission.

27.3.4.2 No Res Judicata or Collateral Estoppel Effect. Any determination or finding of any non-binding arbitration conducted pursuant to this Article shall not have any res judicata or collateral estoppel effect in any other non-binding arbitration conducted pursuant to this Article, or in any other action commenced by any person(s) or entity(ies) whomsoever in state or federal court, whether or not Parties to this Agreement.

27.3.4.3 No Ex Parte Communications. No Party or anyone acting on its behalf shall have any ex parte communication with the Arbiter with regard to any matters in issue. Communications concerning procedural matters such as scheduling shall not be included in this prohibition.

27.3.4.4 Submission. Unless otherwise directed by the Arbiter or agreed by the Parties to a given dispute, the Parties involved in the dispute shall strive to make joint submissions to the Arbiter. The Arbiter shall determine the schedule for the Parties' submissions, the page and form limitations for the submissions, and the schedule and form of any hearing(s).

27.3.4.5 Governing Law. The Arbiter shall apply Federal laws and the laws of the State of California, provided that in the event of a conflict between Federal law and the laws of the State of California, the Federal law shall govern.

27.3.5 Fees and Costs. Initially, Authority, or Developer on behalf of Authority, shall contract directly with the selected Arbiter and shall be responsible for payment of the fees and costs of the Arbiter. The Authority shall have the right to credit against the next payment of Initial Consideration (or if no payment of Initial Consideration remain due, then at the next payment of Additional Consideration), fifty percent (50%) of the full amount of the Arbiter's fees and costs, including the Arbiter's consultant costs. Costs of the Arbitration incurred by the Authority and not credited against Initial or Additional Consideration shall be included as Project costs in calculating the Additional Consideration.

27.3.6 No Cessation of Work Pending Resolution of a Dispute. Pending the decision of the Arbiter of any dispute submitted to the Dispute Resolution Procedure hereunder, the Parties agree that time is of the essence under this Agreement and the DDA and the Project shall not cease or be delayed, unless Authority in its reasonable discretion elects not to proceed until such dispute is resolved. If Authority elects not to proceed with any aspect of the Project during the pendency of a dispute, Authority shall notify the Navy of such election promptly in writing. If Authority proceeds pending a decision of the Arbiter, then, if the parties mutually elect to accept the decision of the Arbiter, the Parties shall prepare a written reconciliation of the amounts paid by the Parties that should have been paid in accordance with the decision of the Arbiter, and the Parties shall then make any necessary adjustments between them based on the reconciliation.

27.4 Institution of Legal Actions. Either Party may institute legal action to cure, correct or remedy any default, to seek resolution of any dispute under this Agreement or to obtain any other remedy consistent with the terms of this Agreement.

## ARTICLE 28 SURVIVAL AND BENEFIT

28.1 Continuing rights, interests, and obligations of the Parties pursuant to this Agreement shall survive Closing as provided in this Agreement and the same shall inure to the

benefit of and be binding upon the respective successors and assigns of the Parties. Nothing in this Agreement otherwise shall be construed as creating any rights of enforcement by any person or entity that is not a party hereto, nor any rights, interest, or third party beneficiary status for any entity or person other than the Parties hereto. The Authority may assign its rights, interests, and obligations under this Agreement to the City of San Francisco if the City of San Francisco replaces the Authority as the designated and federally approved Local Redevelopment Authority under the Defense Base Closure and Realignment Act of 1990, as amended.

## ARTICLE 29 INTERPRETATION

29.1 The headings and captions herein are inserted for convenient reference only and the same shall not limit or construe the paragraphs or sections to which they apply or otherwise affect the interpretation hereof.

29.2 The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms shall refer to this Agreement, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the date of this Agreement.

29.3 Words of the masculine, feminine or neuter gender shall mean and include the correlative words of other genders, and words importing the singular number shall mean and include the plural number and vice versa.

29.4 Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons.

29.5 The terms "include," "including" and similar terms shall be construed as if followed by the phrase "without being limited to."

29.6 This Agreement shall be governed by and construed in accordance with Federal law and the laws of the State of California, provided, that in the event of a conflict between Federal law and the laws of the State of California, the Federal law shall govern.

29.7 Whenever under the terms of this Agreement the time for performance of a covenant or condition falls upon a Saturday, Sunday or holiday observed by the performing party, such time for performance shall be extended to the next business day. Otherwise all references herein to "days" shall mean calendar days.

29.8 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

29.9 Each and all of the recitals set forth at the beginning of this instrument, and any exhibits referenced herein and attached hereto, are incorporated herein by this reference.

#### **ARTICLE 30 NON-DISCRIMINATION**

30.1 The Authority covenants for itself, its successors and assigns and every successor in interest to the Property hereby conveyed, or any part thereof, that the Authority and such successors and assigns shall not discriminate upon the basis of race, color, sex, religion, or national origin in the use, occupancy, sale or lease of the Navy Real Property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Navy Real Property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

#### **ARTICLE 31 AVAILABILITY OF FUNDS**

31.1 The Navy's obligations under this Agreement are subject to the availability of funds appropriated for such purpose. Nothing in this Agreement shall be construed as or constitute a commitment or requirement that the Navy obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. Section 1341, or that Congress, at a later time, will appropriate funds sufficient to meet deficiencies.

#### **ARTICLE 32 MODIFICATION; WAIVERS**

32.1 This Agreement, together with all Exhibits hereto, contains the entire agreement and understanding of the parties in respect to the purchase and sale of the Navy Real Property, and may not be amended, modified or discharged nor may any of its terms be waived except by an instrument in writing signed by the Parties. A waiver by a Party of a specific provision shall not be deemed a waiver of any subsequent provision. The Parties hereto shall not be bound by any terms, conditions, statements, warranties or representations, oral or written, not contained herein.

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**ARTICLE 33**  
**REMEDIES FOR NONPERFORMANCE**

33.1 In the event a Party hereto fails to observe or perform any of its obligations under this Agreement or otherwise breaches this Agreement, after having been provided written notice and failing to cure the default within thirty (30) days after such notice, the other Party will be entitled to exercise any and all of the remedies for breach which are provided herein, as well as any other remedies to which the Party is entitled at law or in equity. Notwithstanding the foregoing, the Authority shall not be liable for monetary damages if it does not accept conveyance of the Navy Real Property in a timely manner. Notwithstanding the foregoing, the sole and exclusive remedies for failure to satisfy a Closing Condition as described in Section 3.7, shall be as set out in Section 3.8.1 and 3.8.2. Notwithstanding the foregoing, the sole remedy for failure by the Navy to meet a Site 12 Performance Benchmark shall be set out in Sections 4.2.2.2 and 4.2.3 through 4.2.5, above.

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**ARTICLE 34**  
**FAILURE TO INSIST ON COMPLIANCE**

34.1 The failure of either Party to insist, in any one or more instances, upon strict performance of any of the terms of this Agreement shall not be construed as a waiver or relinquishment of such Party's right to future performance of this Agreement, but the obligations of the other Party with respect to such future performance shall continue in full force and effect. Whenever the terms of this Agreement call for one Party to approve an action or make a determination before the other Party may undertake or perform such action, said approval or determination shall not be unreasonably denied or delayed.

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**ARTICLE 35**  
**RISK OF LOSS**

35.1 From the effective date of this Agreement, the Party then owning a Parcel shall bear all risks of loss and damage due to casualty that may be suffered by the Parcel(s). Notwithstanding any such loss or damage, each and all of the provisions of this Agreement shall remain unimpaired and in full force and effect.

**ARTICLE 36**  
**COUNTERPARTS**

36.1 This Agreement may be executed in multiple counterparts and/or with the signatures of the Parties set forth on different signature sheets and all such counterparts, when taken together, shall be deemed one original.

**[SIGNATURE PAGE FOLLOWS]**

1           **IN WITNESS WHEREOF**, the Parties, intending to be legally bound hereby, have  
2 caused their duly appointed representatives to execute this Agreement as of the Effective Date  
3 set forth above.  
4

5  
6 WITNESS/ATTEST:

**THE UNITED STATES OF AMERICA**

7  
8  
9  
10  
11 By: \_\_\_\_\_

By: \_\_\_\_\_

12       Name:

13       Title:

\_\_\_\_\_  
Real Estate Contracting Officer

14  
15  
16  
17  
18  
19 WITNESS/ATTEST:

**THE TREASURE ISLAND  
DEVELOPMENT AUTHORITY**

20  
21  
22  
23  
24  
25 By: \_\_\_\_\_

By: \_\_\_\_\_

26       Name:

27       Title:

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**EXHIBIT A**

**DEFINITIONS**

“**Accounting**” has the meaning set forth in Section 4.3.5.1.

“**ACM**” has the meaning set forth in Section 17.4.

“**Additional Consideration**” has the meaning set forth in Section 4.3.1.

“**Agreement**” has the meaning set forth in the Preamble.

“**Anniversary Date**” means the first anniversary of the Initial Closing and each anniversary of such date thereafter; provided, however, that if any Anniversary Date falls on other than a business day, then the Anniversary Date for that year shall be the first business day after the Anniversary Date.

“**Annual**” means a calendar year beginning on the Initial Closing date and commencing on each successive Anniversary Date and continuing until the Termination Date hereof.

“**Appraisal Process**” has the meaning set forth in Section 5.4.

“**Arbiter**” has the meaning set forth in Section 27.3.1.

“**Arbiters’ Qualifications**” has the meaning set forth in Section 27.3.1.1.

“**Assignable Easements**” has the meaning set forth in Section 7.1.3.

“**Assignment of Rents**” has the meaning set forth in Section 4.2.6.

“**Assumed Contracts**” means the contracts, licenses and permits listed in Section 6.1.

“**Auction**” means any arm’s length transaction designed to maximize revenues from the sale of parcels to qualified bidders. Auction formats may include any industry standard marketing approach or typical auction formats as outcry, sealed bid, sealed bid convertible or online and may be left to the discretion of the auction broker to determine the most appropriate format given current market conditions. In no case shall an absolute auction, in which a parcel is sold to the highest bidder regardless of price, or a reserve auction, in which the seller reserves the right to accept or reject the highest bid, be utilized unless agreed upon in advance by all Parties. The Auction shall be managed by a qualified third party real estate broker unrelated to the Developer or Authority, in a manner consistent with industry practice for a non-distressed offering of quality real estate that provides at a minimum: (i) commercially standard due diligence information and access, including, without limitation, information regarding the site and entitlements; (ii) iterative rounds of bidding by qualified bidders; and (iii) commercially standard closing conditions and processes.



1 "Authority" means the Treasure Island Development Authority and its successors and  
2 assigns.

3  
4 "Authority Access Easements" has the meaning set forth in Section 7.1.1.1.

5  
6 "Authority Closing Documents" has the meaning set forth in Section 8.3.

7  
8 "Authority Costs Payment" means the Authority's costs paid by Developer in  
9 accordance with the terms of the DDA. Because the Authority will use Marina Revenues to fund  
10 the Authority's costs, Developer's obligation under the DDA to pay for the Authority's costs will  
11 be reduced by Marina Revenues as more particularly described in the DDA.

12  
13 "Authority Option" has the meaning set forth in Section 3.8.7.

14  
15 "Caretaker Agreement" has the meaning set forth in the ninth Recital and is set forth in  
16 Exhibit LL.

17  
18 "CDPH" means the California Department of Public Health.

19  
20 "CEQA" has the meaning set forth in the seventh Recital.

21  
22 "CERCLA" means the Comprehensive Environmental Response, Compensation and  
23 Liability Act, 42 U.S.C. § 9601, et seq.

24  
25 "Certification" has the meaning set forth in the seventh Recital.

26  
27 "City" has the meaning set forth in the first Recital.

28  
29 "Closing" means the transactions by which the Navy Real Property, or a portion thereof,  
30 is conveyed by Quitclaim Deed by the Navy to the Authority.

31  
32 "Closing Conditions" has the meaning set forth in Section 3.7.

33  
34 "Commercial Lot" has the meaning set forth in Section 5.2.1.

35  
36 "Contract Assumption List" has the meaning set forth in Section 6.1.

37  
38 "Conveyance Schedule" means the schedule for conveyance of the Navy Real Property  
39 to the Authority that is set forth in Exhibit R.

40  
41 "Credit Commencement Date" has the meaning set forth in Section 4.2.5.

42  
43 "Critical Commercial Lot" has the meaning set forth in Section 5.2.1.

44  
45 "Critical Commercial Lots Payment" has the meaning set forth in Section 5.2.1.  
46

1 “CRL” has the meaning set forth in Section 4.2.6.

2  
3 “DDA” means the Disposition and Development Agreement entered into by and between  
4 the Authority and the Developer, dated as of \_\_\_\_\_, 20\_\_\_\_.

5  
6 “DDA Reports” means, collectively, the items set forth in Section 5.9, Section 5.13.2,  
7 and Section 5.13.3.

8  
9 “Default Interest Rate” means an interest rate of three hundred (300) basis points above  
10 the Interest Rate.

11  
12 “Developed Critical Commercial Lot” has the meaning set forth in Section 5.2.2.

13  
14 “Developer” means Treasure Island Community Development, LLC and its successors  
15 and assigns, or other such entity that is the master developer, and expressly excludes the Marina  
16 Developer.

17  
18 “Development Costs” means all Hard Costs, Soft Costs, and Pre-Development Costs,  
19 except to the extent specifically excluded under this Agreement and specifically excluding any  
20 costs, fees or charges related to debt financing that are not also Permissible Financing Costs.

21  
22 “Developer Lots” has the meaning set forth in Section 5.3.

23  
24 “DTSC” means the California Department of Toxic Substances Control.

25  
26 “Easements” means the interests in real property as set forth in Article 7.

27  
28 “EBSs” has the meaning set forth in the fourth Recital.

29  
30 “EDC” has the meaning set forth in the third Recital.

31  
32 “EDC Application” has the meaning set forth in the third Recital.

33  
34 “Effective Date” has the meaning set forth in the Preamble.

35  
36 “EIR” has the meaning set forth in the seventh Recital.

37  
38 “EIS” has the meaning set forth in the sixth Recital.

39  
40 “Entitlements” means all land use approvals and entitlements, including all conditions  
41 of approval and CEQA mitigation measures legally required by the Authority, City or any other  
42 Regulatory Authority as a condition to the subdivision of the Property and development of the  
43 Property in accordance with the DDA.

44  
45 “Environmental Reports” means the documents included in the CERCLA  
46 administrative record for Treasure Island and Environmental Baseline Surveys (EBSs), FOSTs,

1 FOSETs, and any Environmental Services Cooperative Agreements, which documents include  
2 Toxic Substances Control Act 15 U.S.C. §2601 et seq. documents, radiological materials  
3 documents, petroleum corrective action program documents, any lead-based paint and asbestos  
4 surveys relating to the improvements on the Property and any regulatory order or consent  
5 agreement, and any supporting documents specifically referenced therein.  
6

7 **"Excess Land Appreciation Structure"** has the meaning set forth in Section 5.6.4.

8  
9 **"Excluded Personal Property"** has the meaning set forth in Section 3.1.3.  
10

11 **"Excusable Delay"** means a delay in a Party's performance of its obligations hereunder  
12 that is caused by (a) acts of God, enemy action, civil commotion, fire, flood, earthquake or other  
13 casualty; (b) strikes or other labor disputes (to the extent not resulting from the labor practices of  
14 the Party claiming the benefit of the Excusable Delay); (c) material shortages of or inability to  
15 obtain labor or materials beyond the reasonable control of the Party claiming the benefit of  
16 Excusable Delay (except to the extent caused by the negligent act or omission or willful  
17 misconduct of the Party claiming the benefit of Excusable Delay); (d) unanticipated breakage or  
18 accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; (e)  
19 materially adverse weather conditions to the extent that such conditions could not be reasonably  
20 predicted or anticipated; (f) a delay caused by federally-imposed increased security measures that  
21 require upgrades in threat condition or combating terrorism on the Property; (g) Litigation  
22 Excusable Delays; and (h) Regulatory Excusable Delays.  
23

24 **"Exempt Transferee"** has the meaning set forth in Section 3.6.7.  
25

26 **"FFSRA"** means Federal Facilities Site Remediation Agreement dated September 29,  
27 1992, as may be amended, between the Navy and the State of California Department of Toxic  
28 Substances Control ("DTSC") and San Francisco Regional Water Quality Control Board  
29 ("RWQCB") setting forth the Navy's obligations to investigate and remediate sites at the Navy  
30 Real Property subject to the availability of funds and other provisions of the FFSRA. In  
31 addition, the FFSRA establishes the terms and conditions for DTSC and RWQCB approved  
32 changes to schedules and penalties for failure to meet environmental remediation schedules. The  
33 current FFSRA is attached hereto as Exhibit O.  
34

35 **"Final IRR"** has the meaning set forth in Section 4.3.6.1.

36 **"First Tier Participation"** has the meaning set forth in Section 4.3.1.  
37

38 **"First Tier Payment"** has the meaning set forth in Section 4.3.2.  
39

40 **"FOST"** means a written determination by the Navy that a Parcel may be transferred by  
41 a Quitclaim Deed to the Authority in full compliance with 42 U.S.C. §9620(h)(3)(A) or  
42 §9620(h)(4) of CERCLA and described in the fourth Recital. The FOST for the FOST Parcel is  
43 set forth in Exhibit J, attached hereto and made a part hereof.  
44  
45

46 **"FOST Parcel"** has the meaning set forth in the fifth Recital.

1  
2 "FSSR" has the meaning set forth in Section 3.7.1.2.

3  
4 "GAAP" has the meaning set forth in Section 4.3.5.

5  
6 "Government" means the United States of America.

7  
8 "Government Real Property" means the real property owned by the United States of  
9 America as described in Exhibit C, attached hereto and made a part hereof, which includes real  
10 property under the jurisdiction, custody or control of the United States Coast Guard, the United  
11 States Department of Labor, and the Federal Highway Administration, and specifically excludes  
12 the real property, easements, rights of access or other interests under the jurisdiction, custody, or  
13 control of the Navy as specified in Section 3.1.1.

14  
15 "Gross Revenues" means, for any period, all cash revenues received by the Developer  
16 from any source whatsoever, and whether collected through or outside of escrow in connection  
17 with all or any part of the Project, in each case for such period, which shall include, the gross  
18 proceeds of sale or transfer of the Lots or any portion thereof, rents or other payments paid to  
19 Developer as the master landlord under any ground lease or as a property manager under an  
20 interim management agreement with the Authority for existing facilities and open space,  
21 including any of the Authority's revenues assigned to the Developer pursuant to the DDA (which  
22 assignment may exclude revenues of the Authority that are used to pay for the Authority's costs  
23 and expenses that are not included in the Authority Cost Payment pursuant to the DDA);  
24 proceeds from the first sale of ground leases or refinancing intended to capitalize ground value;  
25 any damage recoveries, insurance payments or condemnation proceeds payable to the Developer  
26 with respect to the Project to the extent not otherwise used for repair or reconstruction of the  
27 Property, all revenues derived from agreements to which the Developer is a party pursuant to  
28 which the Developer participates in the proceeds of the operation or sale of any portion of the  
29 Property sold to a Vertical Builder, the proceeds of and proceeds from any assessment or special  
30 tax districts formed for purposes of providing funds for costs associated with the Project, and  
31 amounts paid to Developer from tax increment financing or other public financing, and grants  
32 and tax credits to reimburse Developer for infrastructure or other qualifying costs. Gross  
33 Revenues shall specifically exclude the proceeds of any capital contributed to the Developer by  
34 its partners or members or the proceeds of any loan made to the Developer.

35  
36 "Guidelines for Residential Auction Lot Selection" has the meaning set forth in  
37 Section 5.5.3.

38  
39 "Hard Costs" means Developer's reasonable out-of-pocket costs actually incurred in  
40 connection with the construction of the Horizontal Improvements (which include, without  
41 limitation, construction of improvements by Developer on the Critical Commercial Lots to the  
42 extent required under the DDA). Hard Costs include, without limitation, necessary permit fees,  
43 bond premiums and similar fees and charges required for the construction of the Horizontal  
44 Improvements.

1       **"Hazardous Substance"** means (A) any substance designated pursuant to section  
2 1321(b)(2)(A) of title 33, (B) any element, compound, mixture, solution, or substance designated  
3 pursuant to section 9602 of title 42, (C) any hazardous waste having the characteristics identified  
4 under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] (but  
5 not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C.  
6 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under  
7 section 1317(a) of title 33, (E) any hazardous air pollutant listed under section 112 of the Clean  
8 Air Act [42 U.S.C. 7412], and (F) any imminently hazardous chemical substance or mixture with  
9 respect to which the Administrator of the Environmental Protection Agency has taken action  
10 pursuant to section 2606 of title 15. The term does not include natural gas, natural gas liquids,  
11 liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such  
12 synthetic gas).

13  
14       **"Horizontal Improvements"** means demolition, grading, geotechnical improvements,  
15 environmental investigation, environmental characterization, regulatory agency coordination and  
16 negotiation and environmental remediation for which Developer's costs are not reimbursed  
17 through an Environmental Services Cooperative Agreement or other Navy funds, infrastructure  
18 and utilities, and all other improvements and related costs required to be performed or installed  
19 by Developer pursuant to the terms of the DDA, including but not limited to, the preparation of  
20 land for vertical development, public service and community improvements, transportation  
21 program improvements and subsidies, facilities and equipment, open space and parks  
22 improvements and maintenance, rehabilitation of historic buildings, affordable housing program  
23 and transition housing improvements.

24  
25       **"Illustrative Land Use Plan"** means the Illustrative Land Use Plan attached hereto as  
26 Exhibit Z and described in the third Recital.

27  
28       **"Initial Consideration"** has the meaning set forth in Section 4.1.

29  
30       **"Initial Consideration Term"** has the meaning set forth in Section 4.1.

31  
32       **"Initial Closing"** means the date on which the first conveyance of the FOST Parcel by  
33 Quitclaim Deed from the Navy to the Authority occurs in accordance with Article 3 hereof.

34  
35       **"Installment Payment"** has the meaning set forth in Section 4.2.1.

36  
37       **"Interest Rate"** means an annual interest rate of \_\_\_\_\_%, which equals the interest rate  
38 payable on ten year (10) Treasury Notes in effect as of the month that this Agreement is entered  
39 into plus one hundred fifty basis points (150 bps), which Interest Rate will be locked for the  
40 duration of this Agreement.

41  
42       **"IRR"** means the internal rate of return, annualized, calculated on the Project's Net Cash  
43 Flow by the Excel 2007 "IRR" function using quarterly Net Cash Flows. The Project's Net Cash  
44 Flow shall be adjusted to show all costs incurred in the quarter paid and all revenues in the  
45 quarter received, provided that Pre-Development Costs are applied as of the Initial Closing. An  
46 example of the IRR calculation is attached hereto as Exhibit DD.

1  
2       **"IRR Statement"** has the meaning set forth in Section 4.3.2.

3  
4       **"JV Lots"** has the meaning set forth in Section 5.3.

5  
6       **"Land Use Covenant"** means that certain land use covenant(s) entitled "Covenant to  
7 Restrict Use of Property; Environmental Restrictions" regarding environmental restrictions,  
8 entered into by the Authority and the State of California Department of Toxic Substances  
9 Control, that may be executed for a given Parcel.

10  
11       **"Late Payment"** has the meaning set forth in Section 4.3.4.

12  
13       **"LBP"** has the meaning set forth in Section 17.3.

14  
15       **"LIFO"** has the meaning set forth in Section 3.8.1.

16  
17       **"Litigation Excusable Delay"** means any action or proceeding before any court,  
18 tribunal, or other judicial, adjudicative or legislative decision-making body, including any  
19 administrative appeal, brought by plaintiffs unaffiliated with the Party claiming the benefit of  
20 Excusable Delay which both (1) (x) seeks to challenge the validity of any action taken by the  
21 Party claiming the benefit of Excusable Delay, including the Party's approval, execution, and  
22 delivery of this Agreement and its performance hereunder, or the performance of any action  
23 required or permitted to be performed by the Party hereunder, or (y) seeks to challenge the  
24 failure of any Regulatory Authority to issue, the conditions of, or the validity of any other permit  
25 required to conduct the Party's obligations under this Agreement, and (2) is reasonably likely to  
26 prevent the Parties from timely performing its obligations under this Agreement. Performance  
27 by a Party hereunder shall be deemed delayed or made impossible by virtue of Litigation  
28 Excusable Delay during the pendency thereof, and until a judgment, order, or other decision  
29 resolving such matter in favor of the Party whose performance is delayed has become final and  
30 unappealable. The Parties shall each proceed with due diligence and shall cooperate with one  
31 another to defend the action or proceeding or take other measures to resolve the dispute that is  
32 the subject of such action or proceeding.

33  
34       **"Lots"** means a building site to be prepared by Developer and conveyed for  
35 consideration to a third party or Developer affiliate pursuant to the terms of the DDA, including,  
36 without limitation, the Commercial Lots.

37  
38       **"Major Phase"** has the meaning set forth in Section 5.2.1.

39  
40       **"Major Phase Decision Notice"** has the meaning set forth in Section 5.7.1.

41  
42       **"Major Phase Decisions"** has the meaning set forth in Section 5.6.

43  
44       **"Marina Developer"** means Treasure Island Enterprises, LLC, its successors and  
45 assigns, or such other entity that is the master tenant and developer of the Treasure Island  
46 Marina.



1  
2       **"Marina Project"** means the redevelopment and operation of the Treasure Island Marina  
3 in accordance with a Lease Disposition and Development Agreement and a Ground Lease  
4 between the Authority and the Marina Developer.

5  
6       **"Marina Property"** means the property described in Exhibit F attached hereto which  
7 will be used for the Marina Project.

8  
9       **"Marina Revenues"** means minimum rent, percentage rent and any proceeds from  
10 refinancings, sales or subleases for the Marina Project that are actually received by the Authority  
11 under the terms of the Marina Ground Lease and/or the Marina Lease Disposition and  
12 Development Agreement. Marina Revenues shall not include the amount of any rent credits that  
13 the Marina Developer is entitled to receive under the terms of the Marina Ground Lease.

14  
15       **"Market Rate Lots"** has the meaning set forth in Section 5.3.

16  
17       **"Market Rate Units"** has the meaning set forth in Section 5.3.

18  
19       **"Multiple Conveyances"** means a series of Partial Conveyances.

20  
21       **"Navy"** has the meaning set forth in the Preamble.

22  
23       **"Navy Access Easements"** has the meaning set forth in Section 7.1.1.2.

24  
25       **"Navy Closing Documents"** has the meaning set forth in Section 8.2.

26  
27       **"Navy Office"** has the meaning set forth in Section 13.1.

28  
29       **"Navy Office Agreement"** has the meaning set forth in Section 13.1 and is attached as  
30 Exhibit K-2.

31  
32       **"Navy Personal Property"** has the meaning set forth in Section 3.1.3.

33  
34       **"Navy Property"** means, collectively, the Navy Personal Property and the Navy Real  
35 Property.

36  
37       **"Navy Real Property"** means real property owned by the United States of America  
38 under the jurisdiction, custody, and control of the Navy as specified in Section 3.1.1, and  
39 specifically excludes the real property, easements, rights of access or other interests under the  
40 jurisdiction, custody, and control of the United States Coast Guard, the United States Department  
41 of Labor, or the Federal Highway Administration, as described in Exhibit C attached hereto.

42  
43       **"Navy Real Property Documents"** has the meaning set forth in Section 12.1.

44  
45       **"Navy Reserved Access Easement"** has the meaning set forth in Section 7.1.1.2.



1       **"NEPA"** has the meaning set forth in the sixth Recital.

2  
3       **"NEPA ROD"** has the meaning set forth in the sixth Recital.

4  
5       **"Net Available Tax Increment Revenues"** has the meaning set forth in Section 4.2.6.

6  
7       **"Net Cash Flow"** means Gross Revenues received by the Developer from the Project  
8 less Development Costs paid by the Developer.

9  
10       **"Non-Assignable Easements"** has the meaning set forth in Section 3.6.

11  
12       **"Non-Critical Commercial Lot"** has the meaning set forth in Section 5.2.1.

13  
14       **"Non-Developer Critical Commercial Lot"** has the meaning set forth in Section 5.2.2.

15  
16       **"Open Space Acres"** means those portions of the Navy Real Property identified in the  
17 Illustrative Land Use Plan as 'Open Space' or 'Public Services, Civic, Institutional', consisting  
18 of approximately \_\_\_\_\_ acres.

19  
20       **"Option Notice"** has the meaning set forth in Section 3.8.7.

21  
22       **"Option Property"** has the meaning set forth in Section 3.8.7.

23  
24       **"Owner Property"** has the meaning set forth in Section 7.1.1.3.3.

25  
26       **"Parcel"** or **"Parcels"** has the meaning set forth in the fifth Recital.

27  
28       **"Partial Conveyance"** means a conveyance by deed from the Navy to the Authority of  
29 any number of Parcels comprising less than the entire Navy Real Property.

30  
31       **"Party"** or **"Parties"** has the meaning set forth in the Preamble.

32  
33       **"Performance Benchmark"** has the meaning set forth in Section 4.2.2.

34  
35       **"Permissible Financing Costs"** means debt service and required reserves for Mello-  
36 Roos Bonds that are not withheld in such Mello-Roos Bonds issuances; and debt service and all  
37 other related financing costs, including, without limitation, bond issuance costs and fees, legal  
38 fees, and bond marketing costs, actually incurred and paid by Developer to pay for certain public  
39 facilities to be constructed on the Property, including a fire/police station and public parking  
40 garages, to the extent financed using public finance vehicles such as certificates of participation  
41 or revenue bonds.

42  
43       **"Pre-Approved Arbiters List"** has the meaning set forth in Section 27.3.1.

1       **"Pre-Closing Obligations"** has the meaning set forth in Section 21.1.

2  
3       **"Pre-Development Costs"** means reasonable costs actually incurred and paid and  
4 directly related to the development, Entitlement, acquisition and implementation of the Project  
5 incurred by Developer between the execution of the Exclusive Negotiating Agreement between  
6 Authority and Developer and the Initial Closing, including architectural, engineering,  
7 environmental, consultant, community outreach, legal and other professional fees; real property  
8 taxes and assessments; insurance expenses; title and survey, sales and marketing expenses;  
9 project management costs, security and site maintenance; fees and charges for bonds and  
10 permits; and City cost reimbursements. The following shall not constitute "Pre-Development  
11 Costs": (1) Repayment of the principal, fees and interest of any loan or other expense that is not  
12 also a Permissible Financing Cost; or (2) distributions, preferred return or other capital return to  
13 the members of the Developer. Pre-Development Costs also include a compound return on all  
14 such costs equal to 20% per annum. An example of the calculation of Pre-Development Costs  
15 incurred prior to the Initial Closing is attached hereto as Exhibit KK.

16  
17       **"Product Types"** has the meaning set forth in Section 5.5.2.

18  
19       **"Project"** means the mixed use development more particularly described in the DDA,  
20 and expressly excludes the Marina Project.

21  
22       **"Property"** means, collectively, the Government Real Property and the Navy Property.

23  
24       **"Qualified Appraiser Pool"** has the meaning set forth in Section 5.4.1.

25  
26       **"Quarter"** means a three-month period commencing on the first day of the Initial  
27 Closing and continuing until the Termination Date hereof.

28  
29       **"Quitclaim Deed(s)"** means those certain recordable quitclaim deeds conveying the  
30 Navy's right, title, and interest to the Navy Real Property and the Easements to the Authority, in  
31 the forms attached hereto and made a part hereof as Exhibit D-1 and Exhibit D-2.

32  
33       **"RACR"** has the meaning set forth in Section 3.7.1.4.

34  
35       **"Redesign Budget"** has the meaning set forth in Section 4.2.4.

36  
37       **"Redesign Plan"** has the meaning set forth in Section 4.2.3.

38  
39       **"Redesign Trigger Event"** has the meaning set forth in Section 4.2.3.

40  
41       **"Redevelopment Plan Redesign Costs"** has the meaning set forth in Section 4.2.4.

42  
43       **"Regulatory Authority"** means any governmental agency having regulatory jurisdiction  
44 over the Property to issue any required authorization, approval or permit.  
45

1       **"Regulatory Excusable Delay"** means delays by Regulatory Authorities in issuing  
2       requisite approvals or consents beyond the reasonable control of the Party claiming the benefit of  
3       Regulatory Excusable Delay, provided that the Party claiming the benefit of Regulatory  
4       Excusable Delay is diligently proceeding to obtain all necessary approvals from Regulatory  
5       Authorities. Without limiting the foregoing, Regulatory Excusable Delays shall not include  
6       delays resulting from (i) the Party's failure to timely respond to requests for information or (ii)  
7       the Party's failure to take actions or proceed in a manner requested by the Regulatory Authority  
8       that is consistent with industry standard practices and Regulatory Authority requirements as  
9       commonly applied for the intended land use for property within the jurisdiction of the applicable  
10      Regulatory Authority.

11  
12      **"Remainder Parcel"** has the meaning set forth in the fifth Recital.

13  
14      **"Reporting Period"** has the meaning set forth in Section 4.3.2.

15  
16      **"Re-Setting of the Minimum Bid Price"** has the meaning set forth in Section 5.5.

17  
18      **"Residential Auction Lots"** has the meaning set forth in Section 5.3.

19  
20      **"Reuse Plan"** has the meaning set forth in the third Recital.

21  
22      **"Road Easement"** has the meaning set forth in Section 7.1.1.1.

23  
24      **"SEBS"** has the meaning set forth in the fourth Recital.

25  
26      **"Second Tier Participation"** has the meaning set forth in Section 4.3.1.

27  
28      **"Second Tier Payment"** has the meaning set forth in Section 4.3.3.

29  
30      **"Site 12 Development Parcel"** has the meaning set forth in Section 4.2.2.

31  
32      **"Site 12 Performance Benchmark"** has the meaning set forth in Section 4.2.2.1.

33  
34      **"Site 12 ROD"** has the meaning set forth in Section 4.2.2.1.1.

35  
36      **"Site 12 ROD Notice"** has the meaning set forth in Section 4.2.2.1.

37  
38      **"SHPO"** has the meaning set forth in the eighth Recital.

39  
40      **"Soft Costs"** means Developer's reasonable out-of-pocket costs actually incurred and  
41      paid on or after the Initial Closing (except as otherwise provided below or in Section 5.13) and  
42      attributable to the following: designing the Horizontal Improvements and improvements on the  
43      Critical Commercial Lots; marketing and selling the Lots, including Auction costs; Entitlements;  
44      architectural, engineering, consultants, community outreach, attorney and other professional  
45      fees; real property taxes and assessments; Permissible Financing Costs; insurance expenses,  
46      including environmental insurance; sales and marketing expenses; security and site maintenance;

1 customary closing costs incurred in connection with sales of the Lots; Authority Costs Payments;  
2 costs and subsidies incurred pursuant to the DDA, including, without limitation: costs and  
3 subsidies not otherwise included in Hard Costs related to implementation of the transportation  
4 program, affordable housing and transition housing program, rehabilitation of the historic  
5 buildings, development of the Critical Commercial Lots, development of the parks and open  
6 space, and public art; any Initial Consideration, Additional Consideration, and interest payments  
7 on both, and expenses incurred by Developer related to management of existing facilities and  
8 open space under a management agreement with the Authority. Without limiting the foregoing,  
9 the following shall not constitute "Soft Costs": (1) repayment of the principal and interest, fees  
10 or costs of any loan, investment or financing other than Permissible Financing Costs; and (2)  
11 distributions, preferred return or other capital return to the members of Developer; and (3) costs  
12 and fees related to compliance and reporting to lenders other than those required for any  
13 financing allowed under Permissible Financing Costs.

14  
15 **"Subordinate Pledge"** has the meaning set forth in Section 4.2.6.

16  
17 **"Term"** means the term of this Agreement, commencing on the Effective Date and  
18 expiring on the Termination Date unless terminated earlier as otherwise provided for herein.

19  
20 **"Termination Date"** means the date twenty five (25) years from the Initial Closing or as  
21 adjusted by mutual agreement of all Parties based on the annually updated pro forma.

22  
23 **"Third Party Access Easement"** has the meaning set forth in Section 7.1.1.2.

24  
25 **"Title Company"** means such title insurance company as the Authority shall from time  
26 to time designate.

27  
28 **"Treasure Island"** has the meaning set forth in the first Recital.

29  
30 **"Unperfected Easements"** has the meaning set forth in Section 3.6.

31  
32 **"Utilities Agreement"** has the meaning set forth in Section 9.1.

33  
34 **"Utility Easements"** has the meaning set forth in Section 7.1.2.

35  
36 **"Utility Infrastructure"** means all utilities and related support infrastructure located on  
37 and off the Navy Real Property that are assignable or transferable by the Navy such as electrical,  
38 water, sewer, gas, and storm drainage lines to be transferred to the Authority under this  
39 Agreement pursuant to the terms and conditions set forth in a Bill of Sale in the form attached  
40 hereto and made a part hereof as Exhibit H-2 or the Quitclaim Deeds in the form attached hereto  
41 and made a part hereof as Exhibit D-1 or Exhibit D-2.

42  
43 **"Vertical Builder"** means the successor owner of a Lot pursuant to a transfer permitted  
44 under the DDA who is building Vertical Improvements.

1           **“Vertical Improvements”** means buildings and structures that are not part of the  
2 Horizontal Improvements constructed on Lots transferred to a Vertical Builder.

3  
4           **“Work Program”** has the meaning set forth in Section 4.2.4.

# DRAFT

SAN FRANCISCO, CA

## TREASURE AND YERBA BUENA ISLAND OPEN SPACE PLAN



FEBRUARY 10, 2011

TREASURE ISLAND COMMUNITY DEVELOPMENT





## OPEN SPACE PLAN CONTENTS

<i>Vision Statement</i>	5
<i>Plan Highlights</i>	5
<b>INTRODUCTION</b>	<b>6</b>
<i>Purpose of the Document</i>	
<i>Project Summary</i>	
<i>Open Space Planning Background</i>	
<i>Relationship of this Plan with other Project Plans</i>	
<b>OPEN SPACE PLAN OVERVIEW</b>	<b>10</b>
<i>Planning, Design and Process</i>	
<i>Landscape Types</i>	
<i>State Tidelands Trust</i>	
<b>OPEN SPACE AREAS</b>	<b>16</b>
<i>Proposed Parks and Open Space</i>	
<b>OPEN SPACE IMPROVEMENTS</b>	<b>19</b>
<i>Improvement Descriptions by Area</i>	
<i>General Requirements</i>	
<b>Open Space and Shoreline Access</b>	<b>58</b>
<b>Sea Level Rise - Open Space Strategies</b>	<b>62</b>
<b>Ownership - Management and Project Partners</b>	<b>68</b>
<b>Operations and Management Responsibilities</b>	<b>70</b>
<b>Existing Open Space and Recreation Facilities</b>	<b>72</b>
<b>Open Space Phasing</b>	<b>74</b>
<b>Acknowledgements</b>	<b>79</b>

## ***Vision***

For a brief, exhilarating moment during the Golden Gate International Exposition, the world's spotlight shined brightly on the picturesque Yerba Buena Island and the newly minted Treasure Island, transfixing San Francisco with a bold vision of urbanity and progress. With America's entry into the Second World War in 1941, that spotlight faded as the islands were redeployed as a Navy base for national defense, a task they fulfilled for over forty years. Now redevelopment will reestablish both islands as a vital part of the City, integrating them into the physical fabric and civic consciousness of San Francisco and rekindling the Exposition's ground breaking vision of the future. Key to this redevelopment plan is an exceptional park system with a diverse array of urban public spaces that are integrated with new neighborhood development and provide a connection with the ecological and experiential qualities of the Bay.

## ***Plan Highlights***

### **Parkland**

With nearly 300 acres of new parks and habitat areas, Treasure and Yerba Buena Islands are positioned to become an iconic regional destination for Bay Area residents and visitors. The network of parks and open spaces will be both culturally and environmentally rich for all types of recreational activities.

### **Waterfront**

A continuous waterfront will link together a set of distinct and varied open spaces found along the waterfront and will be an integral portion of the Bay Trail that will link the islands' open spaces to the vast network of parks in the East Bay.

### **Sports Park**

The Sports Park will be the islands' active recreation hub and able to accommodate all types of field sports for a variety of ages and recreational levels. Sports fields will be geared towards open lawn sports and recreation activities.

### **Urban Agricultural Park**

A 20 - 25 acre organic farm will provide opportunities to grow a variety of cash crops including; fruits, vegetables, nursery plants and other permaculture products. Programming of the farm is biased towards production but a portion of the farm will be dedicated and open to community farming groups and community gardens.

### **Yerba Buena Hilltop Park and Habitat Management**

An approximately 5 acre Hilltop Park will provide a variety of passive recreational spaces and fantastic overlooks with views to Treasure Island, San Francisco, and the Bay. The plan also features protection of existing ecologically rich habitats and the increased habitat management of degraded areas that will transform the island into an ecologically rich habitat area located in the middle of San Francisco Bay.



## INTRODUCTION

### Purpose of the Document

The purpose of this document is to describe the open space program and improvements to be provided as part of the infrastructure and horizontal development of Treasure Island and Yerba Buena Island.

Building on the Treasure Island and Yerba Buena Island Design for Development document, the “Open Space Plan” is intended to clarify Treasure Island Community Development’s (TICD) responsibilities for the delivery of the open space program, site, and landscape improvements. The Open Space Plan defines specific improvements that shall be provided in each open space area. The Plan also establishes basic standards for each type of improvement. Selected content from the “Design for Development” document has been incorporated in the plan to provide an overview of the open space system. In addition, key issues related to the open space improvements such as, sea level rise, open space and shoreline accessibility, project partners, and Tidelands Trust, are addressed.

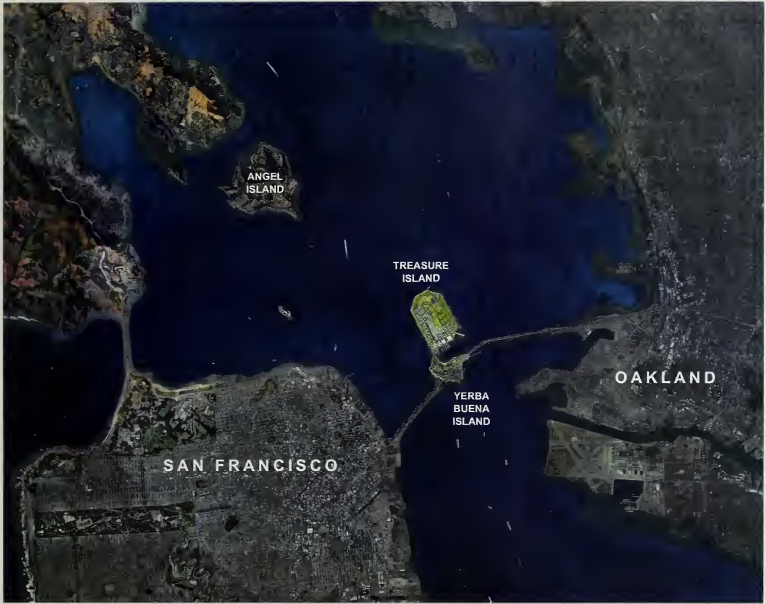
The Open Space Plan will be attached to the Disposition and Development Agreement (DDA) between the Treasure Island Development Authority (TIDA) and TICD.

### Project Summary

The proposed development project is a 360-acre master-planned urban project proposed on Treasure Island and Yerba Buena Island located between San Francisco and Oakland. The proposed development envisions a new distinct neighborhood on Treasure Island and Yerba Buena Island which include housing, commercial, retail and office uses along with over 200 acres of parks and open space. Situated within San Francisco Bay, the plan emphasizes an extensive park and open space system, including waterfront parks and trails along approximately 4 miles of shoreline.

### Open Space Planning Background

The Treasure Island and Yerba Buena Island Open Space system and program are the culmination of over ten years of public discussion on how the extraordinary land assets in the San Francisco Bay should best contribute to the City’s future. In addition to the public discussion and ongoing work with community members and stakeholders, the Open Space Plan reflects intensive analysis of site opportunities and constraints, natural and cultural resources, Tidelands Trust, sea level rise, infrastructure, transportation, access, and habitat management. Each of these issues is discussed in the Design for Development document and specific issues are included in this Plan for reference. The open space program and type of improvements are the result of extensive work with the TIDA, TI/YBI Citizens Advisory Board (TIYBI CAB) existing residents and stakeholder organizations.



TREASURE AND YERBA BUENA ISLAND CONTEXT PLAN

## Relationship of this Plan with other Project Plans

A number of key issues and project improvements related to the Open Space Plan are more fully addressed in other project plans and documents including:

### **Design for Development Document**

The Design for Development for Treasure and Yerba Buena Islands (Design for Development) – contains the urban design standards and guidelines that will direct all future development on both islands. The Open Space section of the Design for Development document describes the aesthetic, social, recreational, and ecological opportunities and provides a framework for public parks, open spaces, and natural areas. It also defines specific standards, program requirements, and design guidelines for each open space type and area included in the development plan. In addition to the program and improvements defined in this Open Space Plan, the Design for Development allows for a wide range of improvements and programs as approved by TIDA and consistent with the standards and guidelines.

The Design for Development is the guiding document and the basis for the Design Review and Document Approval Procedure, while the Open Space Plan defines the scope of the improvements to be provided by TIDC pursuant to the Disposition Development Agreement (DDA). The Open Space Plan is consistent with the open space frameworks, standards, and design guidelines defined in the Design for Development.

### **Design Review and Document Approval Procedure**

The Design Review and Document Approval Procedure (DRDAP) sets forth the procedures for submitting, reviewing, and approving the designs, plans and specifications for Infrastructure and Vertical Improvements in the Project Site. The Authority shall review such designs, plans and specifications to ensure that they conform to and are consistent with the Redevelopment Requirements, and coordinate with applicable City Agencies for review.

### **Infrastructure Plan**

Many aspects of the open space system are closely linked with infrastructure, for example: storm drainage systems, storm water treatment features, and street design. Infrastructure and Open Space planning have been coordinated and integrated throughout the planning process. Key areas for ongoing coordination during the design and construction phases include earthwork and grading, marine engineering, storm drainage systems, stormwater treatment features, and streets. In addition, the San Francisco Public Utilities Commission (SFPUC) will be responsible for the design, construction and operation of the wastewater treatment and recycled water treatment facility located on the northeast corner of the island. Further coordination on the exact size and location of the SFPUC parcel for the wastewater treatment facility, as well as ongoing coordination of the design will be required to ensure that the facility is cohesively integrated with the surrounding park area. The Environmental Impact Report and the Infrastructure Plans include a tertiary wastewater treatment wetland as a project alternative. The wastewater treatment wetland would be owned and operated by the SFPUC. Additional coordination will be required should the SFPUC elect to pursue the alternative. In addition, the inclusion of a stormwater treatment wetland may require recycled water flows from the wastewater treatment facility. For details on the infrastructure system refer to the Infrastructure Plan.

**Transportation Plan & Streetscape Master Plan**

Certain components of the open space system such as bike and pedestrian trails and pathways are also a component of the transportation system. Conversely, many of the streets are designed with enhanced streetscapes which function as part of the public open space system. Public transportation and automobile access are also important to the park system. A complete description of the project's transportation system is found in "*Transportation Plan*". The streetscape concept including street types, typical street sections, standards, and guidelines are included in the Design for Development document. In addition, "*Streetscape Master Plan*", as specified in the DRDAP shall be completed as part of the infrastructure design process.

**Stormwater Control Plans**

Stormwater Control Plans documenting the proposed stormwater management and treatment measures are required by the SFPUC Stormwater Design Guidelines. Stormwater Control Plans will be submitted with Major Phase Infrastructure Plans and will identify the size, type, and design of stormwater features to be incorporated in park and open space areas. The design of stormwater treatment systems and open spaces shall be coordinated to ensure aesthetic and programmatic consistency.

**Yerba Buena Island Habitat Management Plan (YBI HMP)**

The YBI Habitat Management Plan describes adaptive management strategies for the preservation, restoration, and enhancement of ecological resources and habitat on Yerba Buena Island. The goals and strategies outlined in the plan are an integral part of the YBI open space program. This Open Space Plan includes the trails, overlooks and developed open space areas that will be provided as part of the project as compared with the ongoing and long term management of biological resources, to be managed pursuant to the YBI HMP.

**Sustainability Plan**

The design of the parks and open space system is closely related to many project-wide sustainability issues including, site design and land use, community, energy, transportation, waste, and economic vitality. A framework for these issues, including goals, strategies, commitments and aspirational targets are fully discussed in the Sustainability Plan. Sustainable site design methods including, water efficient landscaping, organic soil amendments, recycled materials, habitat creation, and stormwater management will be addressed as part of the implementation process.

**Schedule of Performance and Phasing Plan**

The open space program and construction sequence will be defined by the "*Schedule of Performance*" and Phasing Plan attached to the Disposition and Development Agreement. In general, Open Space Areas and Programs will be delivered with the completion of adjacent horizontal development. Interim landscape areas and pedestrian and bicycle circulation will be provided to ensure a cohesive and complete open space experience and continuous access.



## OPEN SPACE PLAN OVERVIEW

The redevelopment of Treasure Island and Yerba Buena Island provides a unique opportunity to create a world class open space destination in San Francisco Bay that will attract visitors from the region and the world and provide a valuable amenity for Island residents. The design intent for open space on Treasure Island and Yerba Buena Island is to create a contemporary landscape that engages the neighborhoods as well as civic and retail uses with the Bay. The Open Space Plan has been developed to address the following goals and principles. These principles are organized in relation to planning, design, and process.

### Planning

- **Connectivity**

Create connections between parks, streets, and public open spaces.

- **Accessibility**

Provide public open space within a short walking distance of neighborhood residents and visitors and ensure parks and open spaces are easily accessible by transit.

- **Cohesion and Diversity**

The open space is intended to be experienced as a single cohesive park made up of many interesting different places. The open spaces on Treasure Island and YBI will have two distinct and unique identities. The parks and open space experience will be cohesive but will take users through many different and varied experiences that provide a wide range of recreational and open space programs.

### Design

- **Create compelling places**

Reveal and magnify the natural and cultural forces that influence this specific place in the San Francisco Bay. The design will create place-specific landscapes and recognize the Island's unique qualities by amplifying the constructed edge, engaging the natural forces of the Bay, and creating landscapes that respond to these conditions.

- **Engage the waterfront**

Visually, experientially, and ecologically, bring people to the water's edge to fully appreciate being on the Bay.

- **Provide a unique and comprehensive system of neighborhood public open spaces**

Design open spaces that are integrated into an island-wide public open space network. Create social vibrancy within open spaces, including the pedestrian street network, by providing ample spaces for people to gather and interact in a broad variety of activities.

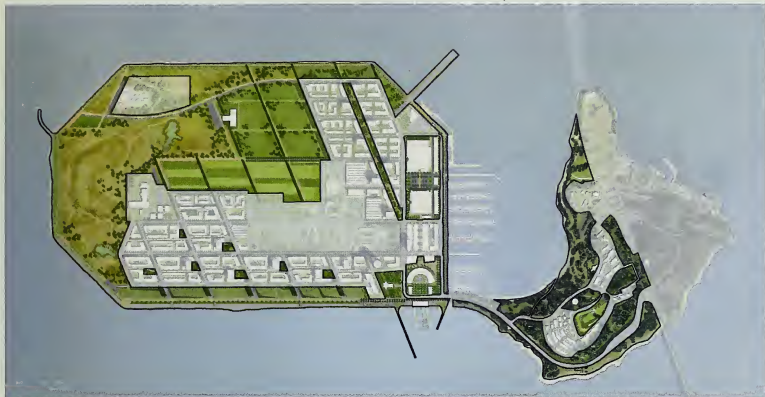
- **Create a high-performance sustainable landscape**

Stormwater management, food production, habitat creation, water conservation, and integrated pest management are primary areas of performance.

### Process

- **Community Involvement and Stewardship**

Encourage ongoing stewardship by involving the community in the design process for individual parks and opportunities to accommodate community-based programs and partnerships.



TREASURE AND YERBA BUENA ISLAND OPEN SPACE PLAN

- **Integration with Development**

Integrate park, open space, and habitat concepts with adjacent uses, private development, and street design.

- **Interpretation and Education**

Provide park facilities and opportunities that support learning about cultural history, ecology, and urban sustainability, and provide for discovery and personal connection with the natural and cultural resources and to achieve environmental literacy.

- **Ecological Infrastructure**

Integrate urban infrastructure with natural process to support urban sustainability. Parks and open spaces are a part of the 'green infrastructure' and will help regulate climate, control storm-water, and provide habitat.

- **San Francisco Bay Ecology**

Enhance wildlife habitat to support the ecology of the San Francisco Bay, its wetlands, and the adjacent uplands.

- **Adaptability and Evolution**

Like many large redevelopment projects, the construction of Treasure Island and Yerba Buena Island will happen in multiple phases lasting several years. As such, a philosophy of adaptive management and flexibility has directed the open space design, allowing for changing uses, varying design approaches, and evolving landscape typologies. The illustrative open space designs shown here are conceptual and the final design process will be the result of the DRDAP and Major Phase and Sub-Phase Application process.

## PARKS AND OPEN SPACE TYPOLOGY

The Islands' diverse open space program is made up of eight distinct landscape types – six for Treasure Island and two for Yerba Buena Island – which give the Islands' landscape both structure and experiential variety. The conceptual designs shown for these landscape typologies are not regulatory, but are guiding visions to be implemented by the standards and guidelines of the Design for Development document.

The primary landscape typologies are:

### **Treasure Island**

#### **Shoreline Park**

A series of waterfront parks that wrap western, northern and eastern edges of Treasure Island, characterized by The Waterfront Plaza at The Transit Hub, Pier 1, a continuous waterfront promenade, water access, and sculpted topography.

#### **Sports and Recreation Park**

An active park designed specifically for sports recreation.

#### **Urban Agriculture Park**

A park devoted to the production of food and/or nursery stock and with opportunities that provide an educational outreach program.

### **Northern Shoreline and The Wilds**

Constructed habitats that integrate stormwater management, education and limited passive recreation.

### **The Urban Core**

A series of plazas and open spaces that help activate the retail core and The Transit Hub. These areas include Waterfront Plaza, Clipper Cove Promenade, Marina Plaza and the Cultural Park.

### **Pedestrian Network & Neighborhood Parks**

Social spaces and amenities specifically designed for residents.

### **Yerba Buena Island**

#### **Hilltop Park**

A regional and neighborhood serving park with passive recreational areas, overlooks, and picnic areas.

### **Regional Open Space - Habitat Management Areas**

The majority of the island's open space is dedicated to habitat management and associated recreational uses such as hiking, biking, and picnicking.

### **Trails and Overlooks**

A continuous network of rustic hiking trails will provide access to the island's open space areas and overlooks.

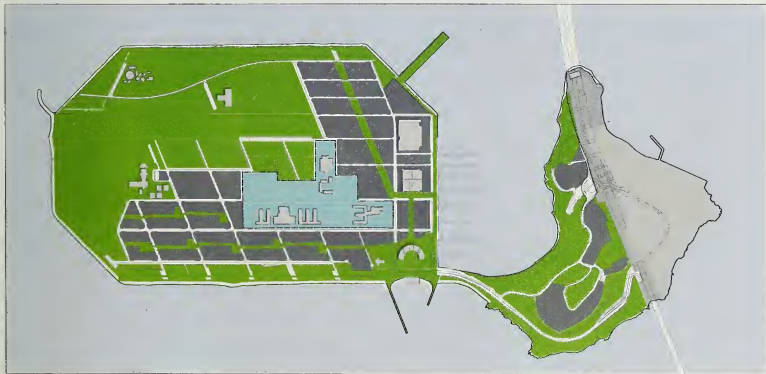
### **Senior Officers Quarters Historic District**

Existing gardens surrounding the historic Senior Officers Quarters.



TREASURE AND YERBA BUENA ISLAND PARK TYPOLOGY

- |                              |   |  |
|------------------------------|---|--|
| 1 SHORELINE PARK             | 4 NORTHERN SHORELINE AND WILDS            | 7 YERBA BUENA ISLAND HMP AREAS               |
| 2 SPORTS AND RECREATION PARK | 5 URBAN CORE                              | 8 YERBA BUENA ISLAND HILLTOP PARK            |
| 3 URBAN AGRICULTURAL PARK    | 6 PEDESTRIAN NETWORK & NEIGHBORHOOD PARKS | 9 SENIOR OFFICERS QUARTERS HISTORIC DISTRICT |



TREASURE AND YERBA BUENA ISLAND LAND USE

OPEN SPACE

DEVELOPMENT PARCELS

JOB CORPS

## TIDELANDS TRUST







Treasure Island is subject to the Tidelands Trust doctrine administered by the State of California. Under the Tidelands Trust doctrine, title to tidelands and lands under navigable waters is held in trust by the State for the benefit of the people of California. The Tidelands Trust effectively acts as a type of zoning by limiting the permitted uses of lands subject to the Trust. Uses of Trust lands are generally limited to waterborne commerce, navigation, fisheries, water-oriented recreation, including commercial facilities that must be located on or adjacent to water, and environmental preservation and recreation, such as natural resource protection, wildlife habitat and study, and facilities for fishing, swimming, and boating. Ancillary or incidental uses that promote trust uses or accommodate public enjoyment of Tidelands Trust lands are also permitted, such as hotels, restaurants and specialty retail. Residential and general office uses are generally not permitted uses on Tidelands Trust lands. Parks and open space in the Trust must be designed so that their uses are consistent with the purpose of the Trust. Park lands that are within the public trust must be designed to serve visitors from throughout the region and beyond, and may not be designed primarily to serve city or neighborhood users. TIDA is the trustee for the Tidelands Trust, pursuant to the Treasure Island Conversion Act of 1997, enacted by the State legislature.

The State Tidelands Trust diagram shows the areas within Treasure Island that will be subject to the Tidelands Trust and those excluded from it upon completion of the Tidelands Trust exchange authorized under the Treasure Island Public Trust Exchange Act (Chapter 543, Stats. of 2004). These Tidelands Trust areas are designated on the diagram as a "Tidelands Trust Overlay Zone." Within the Tidelands Trust Overlay Zone, any use that is "Permitted" or "Special" in the underlying zone is also subject to a determination by TIDA that the use is consistent with the Tidelands Trust. For more information regarding Tidelands compliance refer to the Design for Development document.

The majority of the open space areas on Treasure Island and Yerba Buena Island are subject to the Tidelands Trust, with exception to the following areas: Sports Park, the southeast portion of the Urban Agriculture Park, the Cityside Neighborhood Parks, and the Eastside Commons. Trust and non-Trust areas are identified and tabulated in the Open Space Areas section of this Plan.



STATE TIDELANDS TRUST LANDS MAP

-  BOUNDARIES OF TREASURE ISLAND DEVELOPMENT AUTHORITY (TIDA) PROPERTY
-  EXISTING WATERFRONT LINE
-  LANDS WITHIN TIDA PROPERTY SUBJECT TO THE PUBLIC TRUST UPON COMPLETION OF THE EXCHANGE - TIDELANDS TRUST OVERLAY ZONE
-  LANDS TO BE FREE OF THE PUBLIC TRUST UPON COMPLETION OF THE EXCHANGE
-  OPEN SPACE AREAS TO BE FREE OF THE PUBLIC TRUST UPON COMPLETION OF THE EXCHANGE
-  LANDS OUTSIDE OF TIDA JURISDICTION



## OPEN SPACE AREAS

Nine broad landscape types are found on Treasure and Yerba Buena Island which contain 19 specific open spaces. This map locates those spaces in relation to one another, and is the location key for the description of each space that follows.

### PROPOSED PARKS AND OPEN SPACE

TREASURE ISLAND		ACRES	
1	Waterfront Plaza	2.4	PG 20
2	Building 1 Plaza	2.4	PG 22
3	Cultural Park	2.4	PG 26
4	Cityside Waterfront Park	24.2	PG 28
5	Northern Shoreline Park and The Wilds	103.0	PG 30
6	Eastern Shoreline Park	9.8	PG 32
7	Pier 1	2.7	PG 34
8	Clipper Cove Promenade	2.0	PG 36
9	Marina Plaza	2.0	PG 24
10	Cityside Neighborhood Parks	1.6	PG 36
11	Eastside Commons	2.9	PG 38
12	Sports Park	21.0	PG 40
13	Urban Agricultural Park	25	PG 42
14	Building 2 and 3 Historical Landscape	4.8	PG 44
15	School District Open Space	6.3	NA
		<b>SUBTOTAL</b>	<b>212.5</b>
		<b>TOTAL</b>	<b>212.5</b>

YERBA BUENA ISLAND			
16	Hilltop Park	5.4	PG 46
17	Beach Park	0.8	PG 48
18	YBI Trails and Habitat Management Areas	66.7	PG 50
19	Senior Officers Quarters Historic District	4.77	NA
		<b>SUBTOTAL</b>	<b>77.67</b>
		<b>TOTAL</b>	<b>290.2</b>





# OPEN SPACE IMPROVEMENTS

## AREA DESCRIPTIONS

The following Open Space Improvements section describes the improvements to be provided by TICD as part of the horizontal infrastructure development in each open space area. General Requirements for each type of improvement are provided at the end of this section. The conceptual designs included in the Plan for each area are guiding visions to be implemented according the Standards and Guidelines defined in the Design for Development document. It is expected that the final park designs will be refined as part of the the DRDAP and Major Phase and Sub-Phase Application process, which will include further coordination with existing and future recreational users, City agencies and potential partners.

## Waterfront Plaza

The Waterfront Plaza is the primary point of arrival for visitors and residents to Treasure Island and an ideal location to orient oneself with the islands vast network of public open spaces. The flexible plaza is intended to provide a strong sense of arrival, facilitate numerous types of events and support the various modes of transportation options. With amazing views of the San Francisco skyline the plaza will be the hub of a vibrant commercial district that will provide visitors and residents with both daytime and nighttime attractions. It is envisioned that the design of The Waterfront Plaza will work in conjunction with the program needs of the Ferry Terminal and have continuity with Building One Plaza and the Cultural Park.

### PROGRAM & DESIGN CHECKLIST

(Items Required by the TI & YBI Design for Development)

- A paved plaza that accommodates pedestrian movement between all types of transit services.
- A mixed-use pathway for pedestrians and bicycles.
- Overlook areas located at the waterfront.
- A sheltered bike storage area integrated into the design of the ferry terminal building.
- A restroom facility will be provided within the Ferry Terminal.

### LANDSCAPE ELEMENTS

(Items consistent with the Design for Development)

#### Paving

- Integral colored concrete and/or unit pavers for pedestrian circulation and gathering areas.

#### Lighting

- Path Lighting
- General Area Lighting

#### Grading and Drainage

- As defined by General Requirements.
- Ornamental planting areas in selected areas.

#### Soil Preparation & Fine Grading

- As defined by General Requirements.

#### Planting

- Palms - matching size and form will be used.
- Ornamental planting areas in selected locations.

#### Irrigation

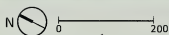
- Fully Automatic system for all planting areas and trees.

#### Furnishing

- Benches and Seating Elements
- Litter and Recycling receptacles
- Bicycle Racks
- Information Kiosk and Wayfinding Signage



WATERFRONT PLAZA PLAN



- ❶ FERRY TERMINAL  
(INCLUDES RESTROOMS AND BICYCLE STORAGE)
- ❷ OVERLOOKS
- ❸ BREAKWATER
- ❹ PALM TREE ALLEE
- ❺ SHORE PROTECTION
- ❻ PLANTING



## Building 1 Plaza

The Building 1 Plaza will be both a gateway to Treasure Island's history and a celebration of its revival. As a threshold entrance to Treasure Island, it is intended to be designed so that it is vibrant with activity day and night. Retail activities are envisioned spilling out onto the Plaza, which will be designed to provide a wide range of seating and gathering opportunities to take advantage of the views to San Francisco. The plaza is composed of three separate spaces The Lower Plaza, The Terrace and The Upper Plaza. The Lower Plaza is dominated by a Palm Grove. The Terrace provides wonderful views towards the City and provides spaces for seating and gathering along stepped gardens and lawn panels. The Upper Plaza is intended as a forecourt to Building 1, with an open and flexible plaza space that provides outdoor seating for activities such as dining and gathering.

### PROGRAM & DESIGN

(Items Required by the Design for Development Standards)

- A plaza that accommodates pedestrian movement from the Waterfront Plaza to Building 1.
- Level paving and lawn areas on the lower and upper plazas.
- Locations reserved for the placement of pavilions on the Lower Plaza.
- Steps and accessible ramps connecting the Lower and Upper Plazas of Building 1.
- The Upper Plaza shall provide a flexible plaza forecourt to Building 1.
- Flexible seating adjacent to retail and eating establishments.
- Terraced panels of paving, lawn and/or ornamental plantings shall be incorporated to create a beautiful space for seating and viewing San Francisco.

### OPEN SPACE IMPROVEMENTS

(Items consistent with the Design for Development)

#### Paving

- Integral colored concrete and/or unit pavers for pedestrian walkways and plazas.

#### Lighting

- Path Lighting
- General Area Lighting
- Accent lighting at stairs and seat walls.

#### Grading and Drainage

- As defined by General Requirements.

#### Soil Preparation & Fine Grading

- As defined by General Requirements.

#### Planting

- Lawn panels will be provided where flexible seating or events are anticipated.
- Elegant ornamental planting will be provided at select locations throughout the Building 1 Plaza.
- Lower Plaza Palm grove: matching size and form.

#### Irrigation

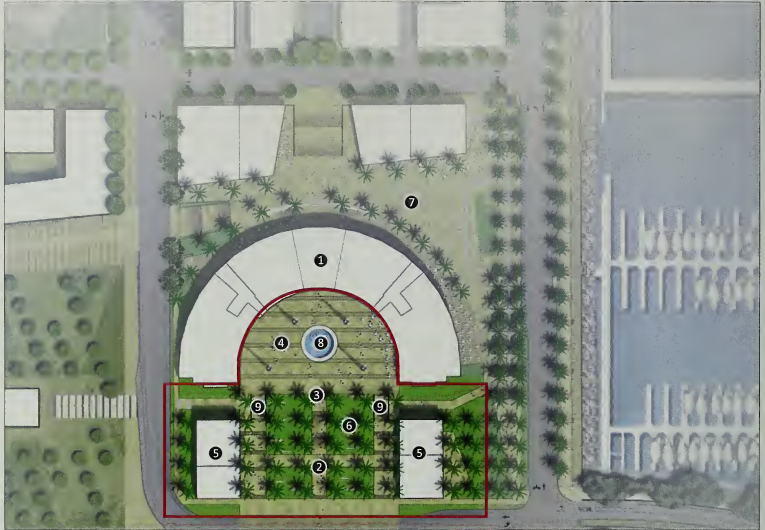
- Fully Automatic system for all planting areas and trees.

#### Furnishing

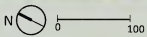
- Built-in site seating elements will be integrated at select locations.
- Benches
- Litter and Recycling receptacles
- Bicycle Racks
- Information Kiosk and Wayfinding Signage

#### Special Features

- A Water Feature located on the upper level of the Building 1 Plaza



BUILDING 1 PLAZA PLAN



- ① BUILDING 1
- ② LOWER PLAZA / PALM GROVE
- ③ TERRACE STEPS
- ④ UPPER PLAZA
- ⑤ KIOSK / PAVILION
- ⑥ LAWN / PLANTING
- ⑦ MARINA PLAZA
- ⑧ WATER FEATURE
- ⑨ STAIR AND RAMP ACCESS



## Marina Plaza

Located at the intersection of the Retail Street, Historic Building 1 and Clipper Cove, Marina Plaza is intended to elegantly combine the unique characteristics of each of these districts into a public plaza designed for entertainment and social gathering. It is envisioned as inviting and welcoming at all hours of the day. Palms that line buildings and frame the public plaza will define and strengthen the character of the plaza, while views overlooking Clipper Cove and towards Yerba Buena Island will make it an ideal location for outdoor cafes, seating, entertainment and as a performance space. Along the edge of Building 1 and the other proposed buildings, Marina Plaza is intended to facilitate areas for outdoor seating for dining and cafes, with generous access down to the Main Retail Street provided with a sloping walkway or ramp.

### PROGRAM & DESIGN CHECKLIST

(Items required by Design for Development Standards)

- Flexible paved areas to support events and support adjacent retail activities on the plaza.

### OPEN SPACE IMPROVEMENTS (Items consistent with the Design for Development)

#### Paving

- Integral colored concrete and/or unit pavers.
- Plaza stairs, integral color concrete.

#### Lighting and Site Electrical

- General Area Lighting
- Accent lighting at trees and special features.
- Electrical Service and Outdoor Receptacles adequate to support event programs in a variety of locations.

#### Grading and Drainage

- As defined by General Requirements.

#### Soil Preparation & Fine Grading

- As defined by General Requirements.

#### Planting

- Palm planting to match the front of Building 1.
- Ornamental accent planting in selected locations.
- Turf panels for casual seating and event space.

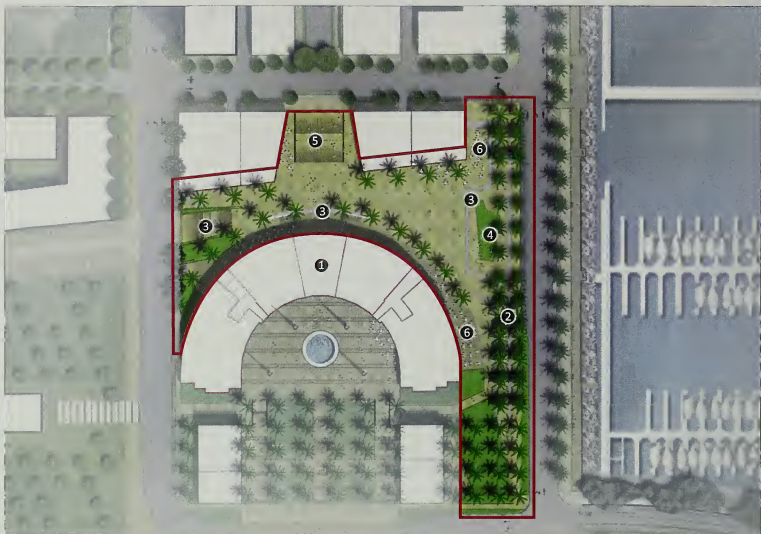
#### Irrigation

- Fully Automatic system for all planting areas and trees.

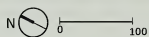
#### Furnishing

- Benches
- Litter and Recycling receptacles
- Bicycle Racks
- Information Kiosk and Wayfinding Signage





MARINA PLAZA PLAN



- 1 BUILDING 1
- 2 PALM GROVE PLANTING
- 3 TERRACE STEPS
- 4 LAWN / PLANTING
- 5 STAIR AND RAMP ACCESS
- 6 OUTDOOR SEATING



## Cultural Park

The Cultural Park is the keystone of the entire open space network on Treasure Island bringing together the Island Center District, Cityside Neighborhood and Waterfront Plaza. The preservation of the existing Chapel will create a distinct destination within the park for cultural events and private parties. The Shared Public Way begins at the south east side of the Park and continues through the Park as a mixed pedestrian and bicycle path.

### PROGRAM & DESIGN

(Items required by Design for Development Standards)

- A universally accessible waterfront promenade that provides waterfront access for both pedestrians and bicycles (Standard provided as part of the Waterfront Plaza, refer to pg. 21)
- A cultural or community serving building.
- Service, loading and parking access integrated into the design of the park.
- A flexible open space able to accommodate full range of events.
- An accessible pedestrian path connecting the Ferry Terminal to the Shared Public Way through the Cultural Park.

### OPEN SPACE IMPROVEMENTS

(Items consistent with the Design for Development)

#### Paving

- Integral colored concrete and/or unit pavers for pedestrian walkways and plazas.
- Stabilized crushed stone paving at areas for large multi-use flexible areas such as picnic areas and large group gathering locations.

#### Lighting

- Path Lighting

#### Grading and Drainage

- As defined by General Requirements.

#### Soil Preparation & Fine Grading

- As defined by General Requirements.

#### Planting

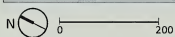
- Turf panels will be used for flexible use areas.
- Existing trees will be preserved during early phases and gradually replaced based on arborist recommendations.
- Where feasible historic olive trees will be relocated in the park.
- Ornamental planting areas in selected areas.

#### Irrigation

- Fully Automatic system for all planting areas and trees.

#### Furnishing

- Benches
- Litter and Recycling receptacles
- Bicycle Racks
- Information Kiosk and Wayfinding Signage



CULTURAL PARK PLAN

- 1 EXISTING CHAPEL BUILDING
- 2 FLEXIBLE OPEN SPACE
- 3 ORNAMENTAL GROVE
- 4 NEW CIRCULATION
- 5 ORNAMENTAL PLANTING



## Cityside Waterfront Park

The Cityside Waterfront Park is intended to be the iconic and the most highly visited park on Treasure Island, with an open and simple design allowing dramatic views. A promenade along Cityside Waterfront Park will offer ample areas for both pedestrians and bicyclists to enjoy the Bay and views. Landforms, windrows and the promenade are all key elements of the overall Treasure Island open space system, and are designed to be consistent with other areas in which those elements occur. Seating and gathering areas could be included on the protected leeward side of the windrows. Guidelines call for sculpture to be integrated into the park design. Continuity is established throughout the length of the waterfront park by the Multi-use paths, trees, landforms and furnishings.

### PROGRAM & DESIGN (Items required by Design for Development Standards)

- A universally accessible waterfront promenade that provides waterfront access for both pedestrians and bicycles.
- Open flexible lawn spaces that accommodate a full range of passive recreational activities.
- Articulated spaces that are sheltered for seating, picnic and group gathering areas.
- Stormwater best management practices shall be incorporated into the design of the park.
- Windrow planting shall be extended into the park.

### OPENS SPACE IMPROVEMENTS (Items consistent with the Design for Development)

#### Paving

- Cityside promenade: The promenade shall be a multi-use path consistent with Bay Trail Standards and shall have a 30' average width. Promenade paving materials shall be a combination of concrete, unit pavers and/or decomposed granite in appropriate areas. Paving type and markings shall be designed to differentiate between travel zones for bicycles and pedestrians.
- Windrow Plazas: Integral colored concrete and/or unit pavers for pedestrian walkways and plazas.
- Secondary Pedestrian walkways: Integral colored concrete and/or unit pavers, crushed stone or asphalt.

#### Lighting

- Promenade: Path Lighting
- Windrow Plazas: General Area Lighting

#### Grading and Drainage

- As defined by General Requirements.
- Sculptural landforms throughout park.

#### Soil Preparation & Fine Grading

- As defined by General Requirements.

#### Planting

- Palm trees planted along the promenade and Cityside Avenue, matching size and form.
- Windrow Trees
- Native turf grass panels as primary planting type.
- Native/ornamental plantings in selected locations including stormwater treatment areas and plazas.

#### Irrigation

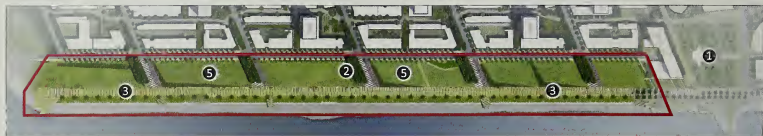
- Fully Automatic system for all planting areas and trees.

#### Furnishing

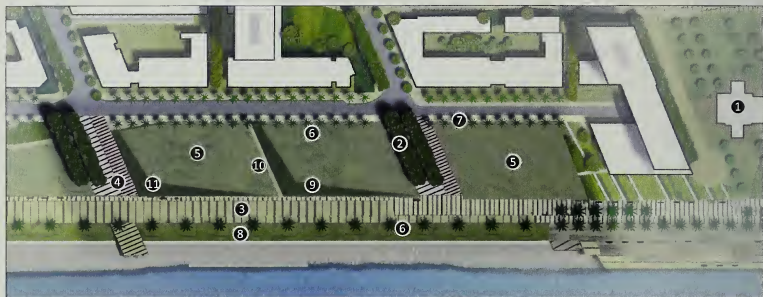
- Built-in site seating elements will be integrated at select locations.
- Benches
- Litter and Recycling receptacles
- Bicycle Racks
- Information Kiosk and Wayfinding signage.

#### Special Features

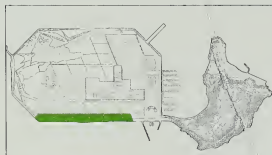
- (4) Wind shelters located at selected picnic/gathering areas



CITYSIDE WATERFRONT PARK PLAN



CITYSIDE WATERFRONT PARK ENLARGEMENT PLAN



- ① CULTURAL PARK
- ② WINDROW
- ③ MULTI-USE PROMENADE
- ④ WINDROW PLAZA
- ⑤ FLEXIBLE LAWN SPACE
- ⑥ PALM TREES
- ⑦ CLASS 1 BIKE LANE
- ⑧ PLANTING BUFFER
- ⑨ LOW LAND FORMS
- ⑩ SECONDARY PATHWAYS
- ⑪ STORMWATER TREATMENT



CITYSIDE WATERFRONT PARK SECTION



## Northern Shoreline Park and The Wilds

The Northern Shoreline Park is envisioned to be the rustic foil to the Cityside Shoreline Park, unrefined, coarse and natural. The design is intended to take advantage of the dramatic Bay views by continuing the waterfront promenade around the island edge. Two water access points, with areas for parking and loading will be provided to accommodate water recreational sports along the northern edge of the island. Moving away from the water's edge The Wilds are envisioned to be an ecologically valuable habitat area that recalls the once-predominant Bay Area shoreline ecosystems of dune swales and moist grassland. This constructed landscape will mimic natural open spaces around the Bay, supporting activities such as hiking, ecological education programs, and habitat viewing. Seasonal and/or perennial wetlands are planned as part of the stormwater treatment system.

### PROGRAM & DESIGN (Items required by Design for Development Standards)

- A universally accessible waterfront promenade that provides waterfront access for both pedestrians and bicycles.
- Asphalt parking lots in two locations. Approximately 75 – 100 parking spaces shall be provided at each location.
- One restroom facility shall be provided, one at the northeast parking area and water access area.
- Amenities for water recreational sports in two locations adjacent to parking lot areas.
- Secondary pedestrian pathways constructed of stabilized decomposed granite.
- Stormwater best management practices shall be incorporated into the design of the park.
- Windrow planting shall be extended into the park.

### OPEN SPACE IMPROVEMENTS (Items consistent with the Design for Development)

#### Paving

- The promenade shall be a multi-use path consistent with Bay Trail Standards. It shall be a 20' wide path constructed of stabilized crushed stone and/or asphalt, accessible by service and emergency vehicles.
- A network of secondary pedestrian walkways paved with crushed stone will be provided throughout the park.
- Asphalt paving at both parking areas with reinforced grass overflow parking areas.

#### Lighting

- General Area Lighting at parking areas.

#### Grading and Drainage

- Rough grading consistent with infrastructure grading plan.
- Minor swales and landforms to create ecological variation and visual interest.
- Natural drainage and infiltration to support habitat creation, with grading provided for overland release.
- Storm drainage infrastructure limited to parking and gathering areas as needed.

#### Soil Preparation & Fine Grading

- Limited soil preparation consistent with native grassland and dune swale plant establishment.

#### Planting

- Predominantly, broadcast and/or hydroseeded native grasslands.
- Limited Native dune swale plantings including woody, perennial and herbaceous plants.

#### Irrigation

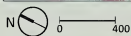
- Fully Automatic system for trees
- No permanent irrigation for grassland or native planting areas.
- Seeding operations will be sequenced with seasonal rains for purposes of establishment.

#### Furnishing

- Benches
- Litter and Recycling receptacles
- Bicycle Racks
- Small group picnic areas: Picnic tables, grill, Litter and Recycling receptacles
- Wayfinding and Interpretive Signage

#### Open Space Facilities and Amenities

- An accessible large group picnic area including a windscreen/shade structure, group barbeque, and picnic tables.
- Restroom Facility located at the northeast parking area and water access point.
- Water Recreational Access Improvements including northeast water access ramp, shower, and windscreen.



NORTHERN SHORELINE AND WILDS



- ① PEDESTRIAN PROMENADE  
(WITH EMV AND MAINTENANCE ACCESS)
- ② PARKING AREA
- ③ WATER ACCESS POINT
- ④ STORMWATER WETLAND
- ⑤ PEDESTRIAN HIKING TRAILS
- ⑥ WASTEWATER TREATMENT PLANT  
(4-6 ACRES FOR PUC SITE) - - - - -
- ⑦ PICNIC AREA
- ⑧ LARGE GROUP PICNIC AREA
- ⑨ BOARDSAILING LOADING AREA  
OVERFLOW PARKING
- ⑩ RESTROOM AND BOARDSAILING AMENITIES



## Eastern Shoreline Park

The Eastern Shoreline Park is envisioned to share similar design characteristics with the Cityside Waterfront Park as an iconic, highly visited park on Treasure Island. The design is intended to be open and simple, allowing views to create a dramatic experience. The promenade through the Eastern Shoreline Park is intended to offer ample areas for both pedestrians and bicyclist to enjoy the Bay and views.

### PROGRAM & DESIGN

(Items required by Design for Development Standards)

- A universally accessible waterfront promenade that provides waterfront access for both pedestrians and bicycles.
- Open flexible lawn spaces that accommodate a full range of passive recreational activities.
- Articulated spaces that are sheltered for seating, picnic and group gathering areas.
- Stormwater best management practices shall be incorporated into the design of the park as needed.
- Windrow planting shall be extended into the park.

### OPEN SPACE IMPROVEMENTS

(Items consistent with the Design for Development)

#### Paving

- The promenade shall be a multi-use path consistent with Bay Trail Standards. It shall be a 20' wide path constructed of stabilized crushed stone and/or asphalt, accessible by service and emergency vehicles.
- Secondary pedestrian pathways paved with concrete, unit pavers, crushed stone or asphalt.

#### Lighting

- Promenade and Secondary Path Lighting

#### Grading and Drainage

- As defined by General Requirements.

#### Soil Preparation & Fine Grading

- As defined by General Requirements.

#### Planting

- Windrow Trees and Native Tree Groves
- Native turf grass panels as primary planting type.
- Native/ornamental plantings in selected locations.

#### Irrigation

- Fully Automatic system for all planting areas and trees.

#### Furnishing

- Built-in site seating elements will be integrated at select locations.
- Benches
- Litter and Recycling receptacles
- Bicycle Racks
- Information Kiosk



EASTERN SHORELINE PARK PLAN

- ① EASTERN COMMON
- ② SPORTS PARK
- ③ WINDROW PLANTING
- ④ FLEXIBLE LAWN
- ⑤ MULTI-USE PROMENADE
- ⑥ WINDROW PLAZA
- ⑦ SECONDARY PATH
- ⑧ PIER PLAZA



## Pier 1

Pier 1 is intended to be a water-oriented destination on the south east corner of Treasure Island. The range of programs and configurations that could occupy Pier 1 varies greatly, from a tall ship program to a simple fishing and public access area. It is intended that the design of Pier 1 be integrated with the adjacent Eastern Shoreline Park.

### PROGRAM & DESIGN

(Items required by Design for Development Standards)

- A universally accessible waterfront promenade that provides waterfront access for both pedestrians and bicycles.

### OPEN SPACE IMPROVEMENTS

(Items consistent with the Design for Development)

#### Paving

- Integral colored concrete topping slab.

#### Lighting

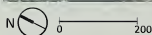
- General Area Lighting

#### Furnishing

- Benches
- Litter and Recycling receptacles
- Bicycle Racks
- Information Kiosk

#### Special Features

- Custom guardrail along the length of the pier.



PIER ONE PLAN

- ① GUARDRAIL
- ② PIER PAVING
- ③ SAILING CENTER



## Clipper Cove Promenade

Clipper Cove Promenade is intended to provide access along the Clipper Cove waterfront, supporting various water activities and pedestrian/bicycle movement. Opportunities for various seating areas are intended to be provided along the length of the Promenade, to capture views out towards Clipper Cove, Yerba Buena Island, the Bay Bridge and beyond. Street and pedestrian elements such as furniture and signage will be located in the area along the promenade, while vertical elements along Clipper Cove Avenue – such as palm trees, light poles, trash cans, bus shelters, parking meters and street signs – can be designed to minimize obstruction for pedestrians and bicyclists. It is envisioned that efficient movement between marine-related equipment and automobiles will be possible and that any bus loading areas minimize conflicts with other programs. It is also envisioned that a graphically-delineated pathway will be used to make bicyclists and pedestrians aware of one another's movements along the Promenade.

### PROGRAM & DESIGN

(Items required by Design for Development Standards)

- A universally accessible waterfront promenade that provides waterfront access for both pedestrians and bicycles.
- Large overlook and small areas located along the waterfront promenade.
- Loading and unloading areas for Clipper Cove Marina patrons.

### OPEN SPACE IMPROVEMENTS

(Items consistent with the Design for Development)

#### Paving

- Integral colored concrete for all pedestrian and bicycle paths.
- Concrete unit pavers for demarcating between pedestrian and bicycle zones.
- Wood decking and/or concrete paving at overlook areas.

#### Lighting

- Path Lighting
- General Area Lighting at overlooks

#### Planting

- Palms planted at an interval of approximately 40' along the length of the Promenade.
- Ornamental planting in selected locations.
- Stormwater planters.

#### Irrigation

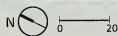
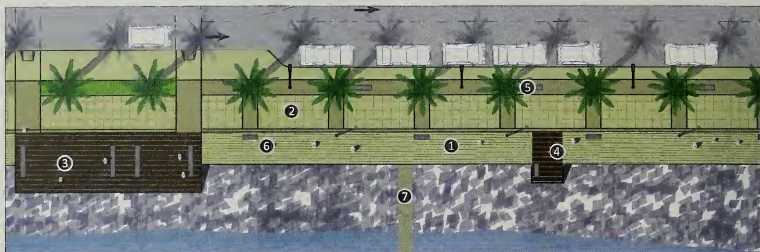
- Fully Automatic system for all planting areas and trees.

#### Furnishing

- Built-in site seating elements will be integrated at select locations.
- Benches
- Litter and Recycling receptacles
- Bicycle Racks
- Information Kiosk and Wayfinding Signage

#### Special Features

- (3) Overlooks with custom galvanized railing.



CLIPPER COVE PROMENADE PLAN



CLIPPER COVE PROMENADE SECTION

- 1 MIXED USE PROMENADE
- 2 CLASS 1 BIKE FACILITY
- 3 LARGE OVERLOOK
- 4 SMALL OVERLOOK
- 5 PALM TREE PLANTING
- 6 PARK BENCH
- 7 MARINA ACCESS



## Eastside Commons

The Eastside Commons are intended to create a grand, vehicle-free, and socially active pedestrian connection from the Island Center to the Eastside neighborhood, serving adjacent residents with a range of facilities varying from tot-lots and picnic areas to passive gardens and tree groves. The Eastside Commons is envisioned as a single park, although it may also be designed as a series of distinct spaces or rooms from block to block. The scale and program of each park is intended to reinforce the primacy of the pedestrian and promote social interaction. A variety of tree species are intended to be incorporated along the length of the Commons. Primary pathways are envisioned at the edges of the park, so the neighborhood-serving activities can occupy the space between the pathways.

### PROGRAM & DESIGN CHECKLIST

(Items required by Design for Development Standards)

- Multi-use pathways that provides access for both pedestrians and bicycles.
- Play structures, picnic areas, ornamental gardens, community gardens, plazas, flexible turf areas and other neighborhood serving program located between the primary pathways.
- Access for emergency vehicles.

### LANDSCAPE IMPROVEMENTS (Items consistent with the Design for Development)

#### Paving

- Integral colored concrete for all pedestrian pathways.
- Unit paving at gathering and plaza areas.
- Crushed stone paving and/or permeable pavers in low intensity use areas.

#### Lighting

- Path Lighting
- General Area Lighting
- Accent lighting at selected locations.

#### Grading and Drainage

- As defined by General Requirements.

#### Soil Preparation & Fine Grading

- As defined by General Requirements.

#### Planting

- Shade trees, including a variety of species.
- Ornamental Planting
- Stormwater planters
- Flexible turf areas for light passive recreation

#### Irrigation

- Fully Automatic system for all planting areas and trees.

#### Furnishing

- Built-in site seating elements will be integrated at select locations.
- Benches
- Litter and Recycling receptacles
- Bicycle Racks

#### Open Space Facilities and Amenities

- (2) Play Areas including fencing, play equipment, and resilient surfacing.

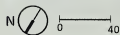




EASTERN COMMON SECTION



EASTERN COMMON PLAN ENLARGEMENT



- ① PEDESTRIAN PATHWAY
- ② PLAY AREA
- ③ ORNAMENTAL GARDEN
- ④ ORCHARD PLANTING



## Sports Park

The Sports Park is envisioned to foster a healthy and active lifestyle for residents and visitors, as well as to provide needed regional-serving sports facilities and space for large events and gatherings. Car parking is intended to be provided on perimeter streets and limited on-site. The Sports Park is envisioned to contain flexible athletic fields allowing a variety of active recreational activities and intensities such as soccer, softball, baseball, cricket, rugby, gaelic football and ultimate frisbee. The facility is geared towards local leagues, community groups, and families.

### PROGRAM & DESIGN

(Items required by Design for Development Standards)

- The Sports Park will accommodate flexible sports fields for unstructured active recreational sports.
- Amount of permanent parking will be appropriate for activity levels provided.
- Windrow planting shall be extended into the park.
- Maintenance and storage facilities
- A restroom facility will be provided within the park.

### LANDSCAPE ELEMENTS

(Items consistent with the Design for Development)

#### Paving

- Asphalt paving for all pedestrian walkways.
- Crushed stone paving and/or permeable pavers in low intensity use areas.

#### Lighting

- Path Lighting

#### Grading and Drainage

- Rough and Finish Grading of Fields
- General surface drainage

#### Soil Preparation & Fine Grading

- As defined by General Requirements.

#### Planting

- Lawn playing fields
- Limited ornamental planting
- Wind Row and Shade Trees

#### Irrigation

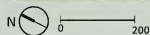
- Fully Automatic system for all planting areas and trees.

#### Furnishing

- Benches
- Litter and Recycling receptacles
- Bicycle Racks
- Information Kiosk and Wayfinding Signage

#### Open Space Facilities and Amenities

- Basic field amenities, including back stops, and small bleachers. Improvements and amenities do not include tournament level field improvements.
- An accessible restroom facility in the gym facility or as a free standing facility in the Sports Park.
- (4) Drinking Fountains.



SPORTS PARK PLAN

- ❶ EXISTING GYM FACILITY
- ❷ PARKING AREA
- ❸ WINDROW PLANTING
- ❹ FLEXIBLE SPORTS FIELDS (LAWN)
- ❺ PEDESTRIAN PATHWAYS
- ❻ EASTSIDE PARK 1 STORMWATER FACILITY
- ❼ EASTSIDE PARK 2 STORMWATER FACILITY
- ❽ EASTSIDE PARK 3 STORMWATER FACILITY



## Urban Agricultural Park

The Open Space Plan includes basic site improvements to prepare the site for farm operations, with the understanding that the Urban Agricultural Park will be managed and operated by a farm operator or non-profit organization.

The Urban Agricultural Park is intended to be a full production urban farm and/or nursery producing fresh produce or nursery stock for project planting and ongoing maintenance and restoration activities. The Agricultural Park will also provide opportunities for educational and recreational amenities. The park is intended to be pragmatic and utilitarian, allowing guests of to experience the process of farming and/or nursery operations. The park shall be open and available to members of the community and will include community garden plots for Treasure Island and YBI residents. The park is intended to be designed with a sequence of walking paths and various areas for interpretation and demonstration, with benches and gathering areas between growing fields which allow visitors to appreciate the agricultural landscapes. Green houses, wind turbines and recycling and composting facilities are envisioned to support sustainable practices. Environmental or horticultural art could also be incorporated into the design.

### PROGRAM & DESIGN CHECKLIST

(Items required by Design for Development Standards)

- A 20 - 25 acre organic agricultural farm.
- Farming practices to include small animal husbandry, various crop cultivation, aquaculture and orchards.
- Design and agricultural production shall be controlled so the operation does not create a negative impact on adjacent residential uses.
- Windrow trees shall be planted along the pedestrian pathways within the farm.

### LANDSCAPE IMPROVEMENTS

(Items consistent with the Design for Development)

#### Paving

- Stabilized crushed stone paths for pedestrian pathways and vehicular access.
- Asphalt concrete or concrete paving in limited areas where required.

#### Grading and Drainage

- Rough grading and provision of storm drainage and treatment improvements.

#### Soil Preparation & Fine Grading

- Soil testing, organic soil amendments and/or import of 6 – 8 inches of topsoil.
- Coordination with 3rd Party operator to determine final soil preparation strategy.

#### Planting

- Windrow Trees
- Stormwater treatment areas as needed.

#### Irrigation

- Mainline and Gate valve for point of connection.

#### Special Features

- A demonstration educational garden, with interpretive signage.
- Group Picnic Area
- Community Garden Plots



URBAN AGRICULTURAL PARK



- ① FARM AREA
- ② DEMONSTRATION GARDEN
- ③ WINDROW PLANTING
- ④ MAINTENANCE YARD
- ⑤ WINDROW PATHWAYS
- ⑥ PUBLIC PARKING
- ⑦ PICNIC AREA
- ⑧ COMMUNITY GARDEN PLOTS  
(FINAL SIZE TO BE DETERMINED)

## Maintenance Yard and Facilities

A maintenance yard with operations and maintenance facilities for all open space shall be located in the Agricultural Park area and will include basic site improvements including utility service and facilities for maintenance. A recycling and composting facility will be incorporated within the maintenance yard area and provided as part of the community facilities program. TICD will continue to coordinate with TIDA and potential project partners to define the open space operations and maintenance requirements and facility needs, including size and layout.

### PROGRAM & DESIGN CHECKLIST

(Items required by Design for Development Standards)

- A 1 acre maintenance yard (final size to be confirmed and coordinated)
- O&M Office
- Shop and Storage Facilities
- Space allocation for recycling and composting facilities

### LANDSCAPE ELEMENTS

(Items consistent with the Design for Development)

#### Paving

- Gravel, asphalt, and/or concrete paving areas as needed.

#### Lighting

- General Area Lighting

#### Grading and Drainage

- Storm drainage and stormwater treatment improvements.

#### Open Space Facilities

- O & M Office Space (800 sf building including restroom facilities)
- Corporation Shop (approximately 5,000 sf)
- Storage Shed (approximately 5,000 sf)
- Perimeter fencing

## Building 2 and Building 3 Landscape

The landscape concept around Buildings 2 and 3 should support the service within the building. Low planting should be a foreground to the building.

### PROGRAM & DESIGN CHECKLIST

(Items Required by the TI & YBI Design for Development)

- Access to building entrances shall be clear and accessible
- Stormwater planters shall be used around the building.

### LANDSCAPE IMPROVEMENTS

(Items consistent with the Design for Development)

#### Paving

- Integral colored concrete and/or unit pavers for pedestrian walkways and plazas.
- Unit paving in special social areas.

#### Lighting

- Path Lighting
- General Area Lighting
- Accent lighting

#### Grading and Drainage

- As defined by General Requirements.

#### Soil Preparation & Fine Grading

- As defined by General Requirements.

#### Planting

- Relocated existing olive trees placed along California Street façade.
- Low Planting used along the base of the building with native grasses and shrubs.

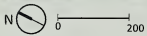
#### Irrigation

- Fully Automatic system for all planting areas and trees.

#### Furnishing

- Built-in site seating elements will be integrated at select locations.
- Benches
- Litter and Recycling receptacles
- Bicycle Racks
- Information kiosk and wayfinding signage





BUILDING 2 AND 3 PLAN

- ① BUILDING 2
- ② BUILDING 3
- ③ CLIPPER COVE PROMENADE
- ④ PUBLIC PARKING LOT
- ⑤ EASTERN COMMON
- ⑥ RESIDENTIAL BUILDING
- ⑦ RETAIL STREET





## Hilltop Park

The exceptional location of the Hilltop Park is intended to be programmed and designed as a local and regional destination with picnic facilities, view overlooks, open lawn areas, and recreation amenities. Prevailing wind orientation, topography and views shall be addressed as part of the park design. Universal access and visitor parking will also be incorporated into the park design.

### PROGRAM & DESIGN CHECKLIST

(Items Required by the TI & YBI Design for Development)

- A 5.3 acre regional park that supports picnic areas, overlooks and flexible use areas.
- Parking for 6 - 12 vehicles shall be provided on or off street.

### LANDSCAPE IMPROVEMENTS

(Items consistent with the Design for Development)

#### Paving

- Integral colored concrete for pedestrian walkways and plazas.
- Unit pavers for areas highly visible plazas.
- Poured in place concrete stairs

#### Lighting

- Path Lighting
- General Area Lighting

#### Grading and Drainage

- As defined by General Requirements.
- Grading to minimize disturbance of existing features and walls.

#### Soil Preparation & Fine Grading

- As defined by General Requirements.

#### Planting

- Retaining existing healthy trees where possible.
- Native grasses and ornamental planting in all landscape areas.
- Drought resistant turf grass at all open lawn areas.

#### Irrigation

- Fully Automatic system for all planting areas and trees.

#### Furnishing

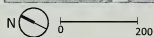
- Picnic Tables
- Barbecue grills
- Litter and Recycling receptacles
- Bicycle Racks
- Information kiosk and Wayfinding Signage

#### Open Space Facilities and Amenities

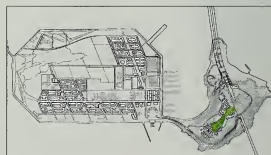
- Play Area, including fencing, play equipment, and resilient surfacing.



HILLTOP PARK PLAN



- ① HOTEL SITE
- ② FLEXIBLE PLAZA
- ③ LOOKOUT POINTS
- ④ PUBLIC PARKING
- ⑤ FLEXIBLE LAWN SPACE
- ⑥ PLAY AREA



## Beach Park

The Beach Park will provide access to Clipper Cove and be accessed from a parking lot and pedestrian pathway off of Treasure Island Road.

### PROGRAM & DESIGN CHECKLIST

(Items Required by the TI & YBI Design for Development)

- Improved beach access to be provided.
- Existing lot to be resurfaced to accommodate 8 parking stalls.

### LANDSCAPE IMPROVEMENTS

(Items consistent with the Design for Development)

#### *Paving*

- Integral colored concrete, asphalt and/or stabilized crushed stone paths for pedestrian pathways.

#### *Lighting*

- Path Lighting

#### *Grading and Drainage*

- As defined by General Requirements.
- Grading to minimize disturbance of existing topography.

#### *Soil Preparation & Fine Grading*

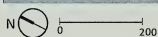
- As defined by General Requirements.

#### *Planting*

- Retaining existing healthy trees where possible.
- Native grasses and ornamental planting.
- Drought resistant turf grass at all open lawn areas.

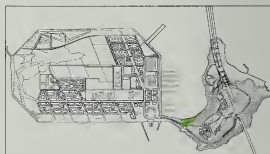
#### *Furnishing*

- Beach Access Stair
- Benches
- Litter and Recycling receptacles
- Bicycle Racks
- Interpretive & Wayfinding Signage
- Picnic Tables
- Controlled Access: Signage and/or fencing to protect existing beach habitat areas as identified in the YBI HMP (final type and extent of access control to be determined).



BEACH PARK PLAN

- ① OPEN LAWN WITH PICNIC AREA
- ② PARKING LOT
- ③ BEACH ACCESS STAIRWAY
- ④ BEACH
- ⑤ BAY TRAIL
- ⑥ POTENTIAL SITE FOR BUILDING 10 RELOCATION



## Yerba Buena Island Trails and Overlooks

This Open Space Plan includes the trails, overlooks and developed open space areas that will be provided as part of the project. The trail and overlook improvements will provide pedestrian access to key open space areas and overlook points on Yerba Buena Island. Trails range in scale from casual hiking paths to paved lookout locations.

### PROGRAM & DESIGN CHECKLIST

(Items Required by the TI & YBI Design for Development)

- Existing trails shall to be maintained and refurbished.
- New pedestrian trails to be added to connect open space areas.

### LANDSCAPE IMPROVEMENTS

(Items consistent with the Design for Development)

#### Paving

- Trails range from stabilized dirt paths to concrete paving.

#### Grading and Drainage

- Trail and Overlook grading to minimize disturbance of existing topography.
- Trail drainage and diversion features to minimize and prevent erosion.

#### Planting

- Native erosion control seeding and erosion control measures at all disturbed grades.
- Native planting at overlooks.

#### Irrigation

- Temporary as needed for plant establishment.

#### Furnishing

- Benches

#### Special Features

- (5) Overlooks at selected locations, including paving, seatwalls, benches, signage, and litter receptacles.

### YERBA BUENA ISLAND HABITAT MANAGEMENT

The initial development phase would include specific habitat management efforts carried out by TICD, as part of the master development of the Island. This would likely include efforts associated with site preparation and infrastructure improvements in areas adjacent to the proposed development parcels and/or public rights-of-way. In addition, the Redevelopment budget for the Redevelopment Plan includes funding that could be used, at the discretion of TIDA, either to complete additional habitat management projects on YBI, and/or as seed money to found a parks and open space conservancy organization that would, in part, help to coordinate and manage the implementation of the Yerba Buena Island Habitat Management Plan (HMP) over the long term. Ideally, the initial funding would also allow for the most pressing restoration, enhancement and preservation efforts to be implemented by a professional restoration contractor, as identified in the HMP, Section III, Management Plan Priorities. TICD would also provide funding for on-going operations and maintenance of HMP areas in accordance with a fixed-schedule of payments as specified in the Financing Plan attached to the DDA.

\* Refer to Yerba Buena Habitat Management Plan for restoration and vegetation management.



YERBA BUENA ISLAND TRAIL NETWORK

- 1 BAY TRAIL
- 2 EAST SPAN CONNECTION
- 3 HILLTOP PARK
- 4 PATHS AND TRAILS
- 5 HMP OPEN SPACE AREA

## ***Yerba Buena Island HMP Open Space***

### **YERBA BUENA ISLAND HABITAT MANAGEMENT**

The initial development phases would include specific habitat management efforts carried out by the Developer as part of the master development of the Island. This would likely include efforts associated with site preparation and infrastructure improvements in areas adjacent to the proposed development parcels and/or public rights-of-way. Work would be carried out over time as adjacent parcels are developed.

The Redevelopment budget for the Redevelopment Plan includes funding that could be used to complete habitat management projects on YBI and/or as seed money to found a parks and open space conservancy organization that would, in part, help to coordinate and manage the implementation of the Yerba Buena Island Habitat Management Plan (HMP) over the long term.

The summary project pro forma includes approximately \$3.5 MM (\$2010) for habitat management and restoration. This budget would allow for the most pressing restoration, enhancement and preservation efforts to be implemented by a professional restoration contractor, as identified in the HMP, Section III, Management Plan Priorities. The summary project pro forma has assumed that ongoing habitat maintenance will cost approximately \$350,000 per year.

TIDA and the Developer have developed a joint budgeting and funding process for the long-term management and maintenance of open space in the project, including the maintenance and management of habitat. Funding for habitat management may come from a variety of sources, including developer subsidy and property taxes generated by the Community Facilities District funding. This funding process is outlined in the Financing Plan attached to the DDA.

\* Refer to Yerba Buena Habitat Management Plan for restoration and vegetation management.





YERBA BUENA ISLAND TRAIL NETWORK

① HMP OPEN SPACE AREA

## Cityside Neighborhood Parks

The Cityside Neighborhood Parks together with the Shared Public Way, a new street typology that prioritizes pedestrian travel over vehicles, will offer a rich and vibrant pedestrian and open space network within the Cityside Neighborhood. As the Shared Public Way meanders through the residential neighborhood the neighborhood parks are intended to serve the outdoor recreational and social space needs of the adjacent residents with a range of program elements varying from tot-lots and picnic areas to passive gardens.

Each neighborhood park is intended to have a distinct character and programmatic function. Building materials and practices are encouraged to be as sustainable as possible and consider long-term maintenance, durability, and energy utilization. The scale and program of each park is intended to reinforce the primacy of the pedestrian and promote social interaction. The parks will be designed so that they are oriented towards and integrated with the nearby Shared Public Way pedestrian street, rather than the adjacent residential building entrances.

The Design for Development establishes two types of Neighborhood Parks with varying scale and program. Neighborhood Parks Type 1 should be sized and laid out to provide areas for small group gathering, picnic areas and gardening and play areas. The larger Neighborhood Parks Type 2 should be sized and laid out to provide areas for active use by groups of children and families.

### PROGRAM & DESIGN CHECKLIST

(Items required by Design for Development Standards)

- Program activities that emphasize adult passive recreation, active child play areas, social gathering and gardening.

### LANDSCAPE ELEMENTS

(Items consistent with the Design for Development)

\*The Cityside Neighborhood Parks may be constructed above below grade parking areas for adjacent residential development and therefore the improvements outlined in this section shall be required as part of the vertical development concurrent with completion of the adjacent parcel development. Temporary neighborhood park improvements will be provided as needed to ensure a cohesive and complete public realm.

#### Paving

- Integral colored concrete and/or unit pavers for pedestrian paths and plaza areas.
- Crushed stone paving and/or permeable pavers in low intensity use areas.

#### Lighting

- Path Lighting
- General Area Lighting

#### Grading and Drainage

- As defined by General Requirements.

#### Soil Preparation & Fine Grading

- As defined by General Requirements.

#### Planting

- Shade trees
- Ornamental Planting
- Stormwater planters
- Turf for play areas is allowed

#### Irrigation

- Fully Automatic system for all planting areas and trees.

#### Furnishing

- Benches
- Litter and Recycling receptacles
- Bicycle Racks

#### Open Space Facilities and Amenities

- A total of (2) Tot lot/play areas located in Type 2 parks, including fencing, play equipment, and resilient surfacing.



- ① SHARED PUBLIC WAY
- ② ADJACENT DEVELOPMENT PARCEL
- ③ ORNAMENTAL PLANTING
- ④ LAWN AREA
- ⑤ PLAY AREA / GATHERING AREA

- TYPE 1 NEIGHBORHOOD PARK
- TYPE 2 NEIGHBORHOOD PARK

## OPENSACE IMPROVEMENTS – GENERAL REQUIREMENTS

### Codes and Regulations

Applicable Codes and Regulations: The Open Space Improvements will comply with all applicable codes and regulations including but not limited to:

Americans with Disabilities Act (ADA)  
California Building Code, Title 24  
San Francisco Building Code  
San Francisco Mayor's Office on Disability (MOD), Accessibility Policies

### Standards and References:

American with Disabilities Act, Accessibility Guidelines (ADAAG)  
Illuminating Engineer's Society (IES), Standards for Lighting Exterior Environments  
American Nursery and Landscape Association, Standard for Nursery Stock, ANSI Z.60.1

## GENERAL REQUIREMENTS

### *Paving*

Materials for paving and pathways will be selected to reinforce the design intent and identity of the park, minimize environmental impact, and maximize durability, longevity and ease of maintenance. These materials may include recycled and salvaged materials such as reclaimed crushed or slab concrete, reclaimed wood, and re-purposed steel bollards and rails. The type and extent of paving will be based on specific program requirements for each open space type and area. Paving improvements will include sub-grade preparation, compaction, and sub-base materials to ensure a durable paving section consistent with proposed uses and loads. Paving surfaces for accessible routes of travel shall be compliant with CBC, Title 24 and ADA requirements for accessibility and slip resistance.

### *Lighting*

Lighting for each open space area and use will be designed to provide illumination for general safety and security as defined by the Illuminating Engineers Society (IES) Standards for Lighting Exterior Environments. Light fixtures will be selected based on suitability for use in public open spaces based on durability, lamp life, and maintenance considerations.

The following site lighting types will be provided as designated in the description of each open space area:

- Path Lighting: Pedestrian scaled pole lights and other fixtures suitable for lighting linear paths of travel.
- General Area Lighting: Pedestrian scaled pole lights and fixtures suitable for lighting gathering areas.
- Parking Area Lighting: General parking area illumination with pole heights ranging from 16 -30 feet.
- Accent and Special Feature Lighting

Fixture Standards and Submittals: Fixture standards for each open space type and area will be developed and submitted as part of the Design Review process.

### *Grading and Drainage*

Earthwork operations and rough grading for each open space area will be coordinated with the Infrastructure Plans and mass grading operations. Grading and storm drainage will be provided

in all open space areas to provide for positive drainage and conveyance of stormwater runoff. The type and extent of storm drainage shall be consistent with standard practices for the proposed landscape types and uses with higher a higher intensity of grading and drainage in smaller parks and planting areas and limited drainage in large open space areas.

#### *Stormwater Treatment*

Stormwater treatment best management practices shall be integrated into open space areas as needed to treat open space stormwater flows. The specific type, location, and size of the best management practices will be addressed in the Stormwater Control Plan(s) submitted with each of the Major Phase Applications.

#### *Soil Preparation and Fine Grading*

Soil Preparation shall be provided for each open space area and major landscape type. Soil preparation operations shall include import topsoil and/or amendment of existing site soils as required to establish soil texture and fertility levels suitable for each planting type. Existing and imported soils will be tested to ensure suitability. Soil preparation materials and operations shall be consistent with the organic approach to soil and landscape management. Fine Grading and mulching will be provided in all planting areas.

#### *Planting*

Landscape planting shall be provided as designated in the description of each open space area. Plant selection will be specific to each location, based on micro climate and soil conditions and program. In general, park and open space plant selection will focus on native and climate-adapted species that require minimal water use and maintenance. Other factors that may influence plant selection include aesthetics, cultural significance, and habitat value.

The size and density of plantings will be consistent with industry standards for each planting type and will be installed to ensure adequate coverage for erosion control and aesthetic purposes. Minimum tree sizes in open space areas will be 15 gallon trees, with specific size requirements as defined by American Nursery and Landscape Association Standards. Landscape planting shall be consistent with the San Francisco Water Efficient Landscape Ordinance (WELo) and will generally use California native or adapted species that require low or infrequent water use. Lawn areas will be minimized and used only in areas where passive or recreational uses require a durable surface.

#### *Irrigation*

Landscape irrigation will be provided as designated in the description of each area. In general, high efficiency fully automatic, underground systems with piping, sprinkler heads, drip emitters, valves, controls, and moisture sensors, ET based controllers, central computer control systems will be provided. Irrigation systems shall be consistent with the San Francisco Water Efficient Landscape Ordinance (WELo).

#### *Site Furnishings*

Site Furnishings will be provided based on use and program requirements as designated in the description of each open space area. The quantity and location of site furnishings will be consistent with the intensity and type of use. Site furnishings will be of a consistent style and character and constructed of durable materials suitable for use in public open spaces.

Site Furnishing Standards and Submittals: Furnishing standards for each open space type and area will be developed and submitted as part of the Design Review process.

#### *Special Features*

Special Features and Amenities consistent with the Design for Development shall be provided as designated in the description of each open space area.

## OPEN SPACE AND SHORELINE ACCESS

New parks and public spaces will be easily accessible to residents and visitors from other parts of the City and region. Pedestrian, bicycle, and transit improvements will provide sustainable modes of park and shoreline access. Bike and pedestrian access throughout and between park areas will be coordinated to provide continuous access. Note that extreme topographic challenges on Yerba Buena Island make direct bike and pedestrian trail connections more difficult. All open space areas will also be accessible by vehicles with parking facilities provided at key locations, for visitors arriving from more distant areas with large groups, and recreational gear and supplies. For more information on access transportation, and transit services refer to the Design for Development and Transportation Plan.

### *PEDESTRIAN NETWORK*

The Islands' various blocks, neighborhoods, parks, and other public spaces are connected by a diverse pedestrian network along a system of urban blocks. Its core consists of primary pedestrian routes leading from the Island Center and Intermodal Transit Hub through the retail area and out to the neighborhoods and open spaces. These primary routes are made up of pedestrian-focused shared streets, park blocks, and pedestrian boulevards intended to invite all-day and year-round use in an active, tree-lined, wind-sheltered environment. The primary pedestrian route leading north from the Transit Hub, called the Eastside Commons, will be a grand pedestrian boulevard connecting to the Eastern Shoreline Park. Primary pedestrian routes west from the Transit Hub will be on a smaller scale and more intimate in character, meandering through the interior of blocks along a number of pedestrian oriented Shared Public Ways. Secondary pedestrian routes, many of them along the Islands' neighborhood streets, enable pedestrians to walk from neighborhood to neighborhood and explore the island. They link directly out to regional open spaces and the Bay on both Treasure Island and Yerba Buena Island. The San Francisco Bay Trail wraps the perimeter of Treasure Island and connects Yerba Buena Island to the Bay Bridge and the bike and pedestrian route to Oakland, via a separated Class 1 multi-use pedestrian/bicycle facility.

### *BICYCLE FACILITIES*

Island planning began with a focus on pedestrians and bicyclists, resulting in a transportation network that provides convenient non-motorized access to all areas of the islands. A Class One bikeway encircles the Island, providing dedicated bicycle access and a full touring route to all shoreline parks and open spaces. Certain Class One routes are shared with pedestrians, primarily around the edge of Treasure Island. Class Two routes are present on many of the Island's streets, with shared bicycle and vehicular lanes on low-speed neighborhood streets. Bicycles are a key transportation option on the Islands. Routes are designed to invite riders of all ages and capabilities for trips that range from a daily commute, to a school trip, to convenient shopping and casual recreation. Facilities and services to support bicycle use – such as bike parking, storage, servicing and a bike library – are an integral part of neighborhood and individual building planning.





PEDESTRIAN NETWORK



BICYCLE NETWORK



**TRANSIT SERVICE**

The use of public transportation by significant numbers of visitors, residents, and workers on the islands is essential to meeting sustainability commitments, providing economic opportunity, and providing regional access. The objective is to provide an efficient, attractive hub for transit in the Island Center District, located at the point of arrival from the Bay Bridge and at the junction of the two Islands. An intermodal transit facility will connect all regional, off-island transportation services such as buses and ferries with on-island services such as shuttles, bicycles and attractive pedestrian routes. The intermodal facility is planned to include a ferry terminal facing the historic Building 1 on the shore of Treasure Island. The transbay buses have stops and layover spaces on Island Center streets.

**STREET SYSTEM**

The hierarchy, pattern and design of streets reflect a commitment to a public realm designed first and foremost for bicyclists, pedestrians and transit services, while at the same time accommodating vehicular traffic. Primary access streets are gracious boulevards that provide primary vehicular access to the open space system. Angled neighborhood streets have significantly lower traffic volumes. They provide views, a dramatic orientation to the island setting and equal access into the neighborhoods for pedestrians, cyclists, and vehicles alike. Pedestrian-focused streets with limited vehicular access complete the network. The streets are designed as an integral part of the Islands' open space system and sustainable infrastructure.

**OPEN SPACE PARKING AREAS**

The following parking areas are provided for purposes of serving open space access and recreational uses: Northeast Shoreline Parking (100 spaces), Northwest Shoreline Parking (100 spaces), Sports Park (qty pending final program). Parking access has been limited to encourage transit use. Parking counts for each location will be finalized based on further development of the program and consultation with user groups during the design phases. In addition to these designated parking areas on-street parking is provided along the Cityside Park, Eastern Shoreline Park, and Clipper Cove Promenade.



OPEN SPACE PARKING AREAS



TRANSIT SERVICE



STREET SYSTEM

## SEA LEVEL RISE OPEN SPACE STRATEGIES

### Background

Despite a growing global concern and efforts to minimize our carbon footprint, forecasts show that climate change and sea level change have occurred throughout geologic times, and are inevitable in the future. While the severity and speed of sea level rise remains an area of some uncertainty, it is prudent for new development in low-lying areas to consider grading schemes and sea level rise strategies that offer protection for the near- to mid-term horizon, and the flexibility to adapt over the long-term. Currently, there are no City policies or regulations establishing specific elevations necessary to protect the Bay edge.

Moffatt & Nichol, who are the shoreline engineers for the Treasure Island project, developed a comprehensive approach to address future sea level rise. The strategy recognizes guidance from the 2009 Draft Climate Adaptation Strategy report prepared by the California Natural Resources Agency, the 2009 Living With a Rising Bay report by BCDC, project-specific coastal studies, an extensive review of the literature, and discussions with other City agencies (including SFPUC and DPW). Since the proposed redevelopment project is too large of a project to rely solely on empirical studies or report, the overall approach is to:

- Design and build a project perimeter at an elevation such that high tides, waves, surges, as well as a mid-term rise in sea levels (defined in the above referenced reports as 16 inches by 2050) can be accommodated without any additional adaptation measures until at least the year 2050 and possibly beyond;

- Design and build all significant assets such as building structures and infrastructure at an elevation that is over 3 feet higher than what is required today for a 100-year level flood protection,

- Create a project-specific Adaptation and Funding Strategy for the long-term (defined in the above referenced reports as 55 inches by 2100) that can be implemented after sea levels have risen 16 inches.

The project's Open Space Plan incorporates the following elements to address sea level rise:

### Development Strategy

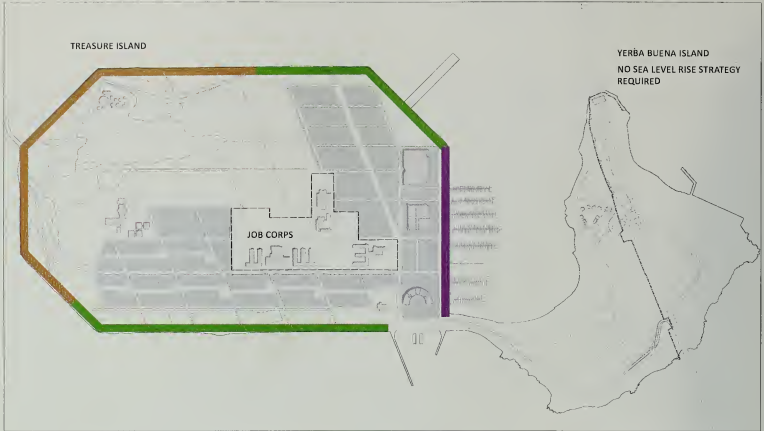
The shoreline edge will be raised to an average elevation of 14' - 16' above NAVD, to protect from tides, storm surges, waves, and tsunamis (the 1% annual chance flood elevation). Based on current projections, this additional elevation would limit the need to make any future shoreline height adjustments during the next 40 to 50 years. In order to provide maximum public access and views to the bay, elevate the pathways and trails along the shoreline such that the perimeter would not obstruct views.

### Adaptive Management Strategy

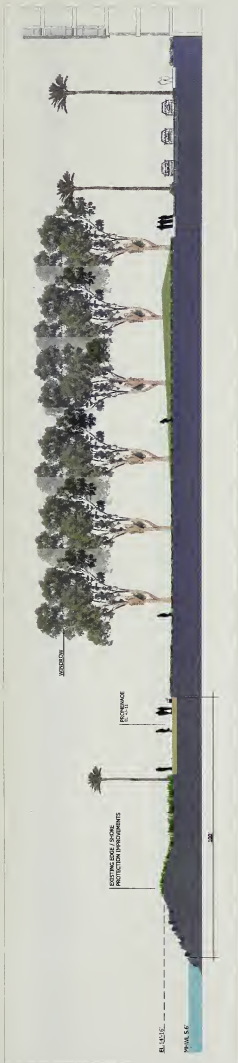
The design of the park system is based upon the ability to respond to future rising sea levels by reserving an adaptive management zone along the island edge. In some areas this zone will allow for waters to rise and new wetland habitats to form. In other areas the zone will allow for mounding up to create protective embankments.

### Site-Specific Solutions

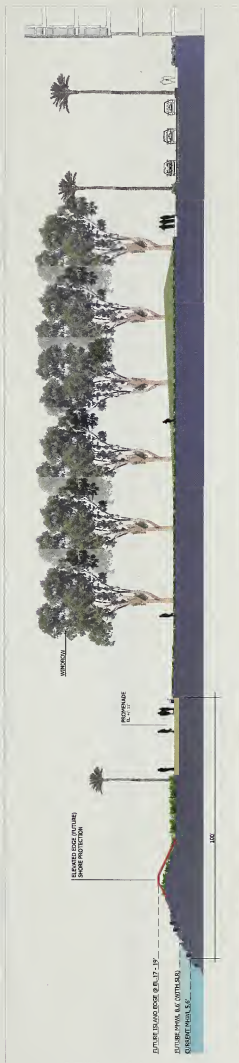
It is important to recognize that the diagrams of the development strategy and adaptive management strategy are necessarily generic. Considering the varied environmental, structural, and topographic conditions that exist along the shoreline, the specific improvements that are necessary will result in a large variety of solutions and cross-sections.



- CITYSIDE WATERFRONT PARK AND EASTERN SHORELINE PARK SEA LEVEL RISE STRATEGY
- NORTHERN SHORELINE PARK AND THE WILDS SEA LEVEL RISE STRATEGY
- CLIPPER COVE PROMENADE SEA LEVEL RISE STRATEGY



PROPOSED CITYSIDE WATERFRONT PARK AND EASTERN SHORELINE PARK IMPROVEMENTS



ADAPTING STRATEGY FOR CITYSIDE WATERFRONT PARK AND EASTERN SHORELINE PARK



PROPOSED NORTHERN SHORELINE PARK ADAPTIVE STRATEGY ALTERNATIVE 1



NORTHERN SHORELINE PARK ADAPTIVE STRATEGY ALTERNATIVE 2



NORTHERN SHORELINE PARK ADAPTIVE STRATEGY ALTERNATIVE 3

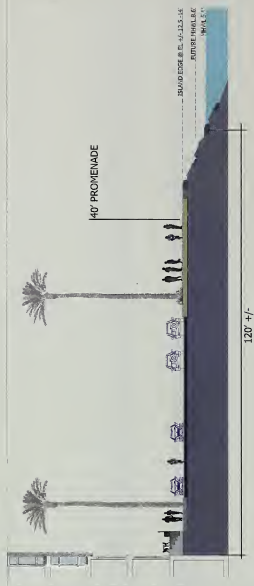


NORTHERN SHORELINE PARK ADAPTIVE STRATEGY ALTERNATIVE - 4

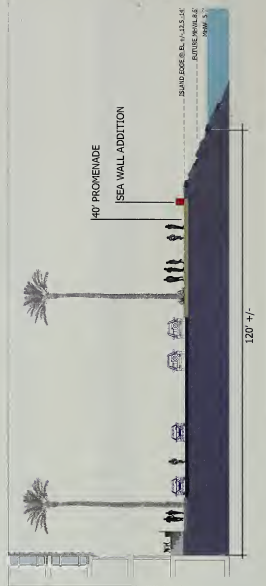


NORTHERN SHORELINE PARK ADAPTIVE STRATEGY ALTERNATIVE - 4





PROPOSED CLIPPERT COVE PROMENADE IMPROVEMENTS



CLIPPERT COVE PROMENADE ADAPTIVE STRATEGY



ISLAND MANAGEMENT ZONES

	TIDA OWNERSHIP AND MANAGEMENT		SCHOOL DISTRICT SITE
	SAN FRANCISCO PUBLIC UTILITIES COMMISSION (FINAL SIZE AND LOCATION TO BE DETERMINED)		TI HOA OWNERSHIP AND MANAGEMENT
			TI HOA MANAGEMENT

## OWNERSHIP AND MANAGEMENT

Ownership of Treasure Island and Yerba Buena Island will pass from the Navy to the Treasure Island Development Authority once the Navy has completed any environmental remedial actions necessary to support the LAND TRANSFER. In turn, the Treasure Island Development Authority will transfer to TIDC all land intended to be sold to third party developers, and TIDA will own all affordable housing parcels, streets and roadways, and the parks and open space. Within the parcels transferred into private ownership, various parks, plaza's and open spaces will be developed and available for use by the residents and visitors pursuant to this Open Space Plan and the Design for Development. These parks and open spaces - such as the Cityside Neighborhood Parks - will be owned and/or managed a by a Treasure Island Home Owners Association (TIHOA) or adjacent commercial development.

TIDA will be responsible for the operations and management all of the public open space and recreation facilities during and following the development process. The operations and maintenance of the Parks and Open Space on privately owned lands will be responsibility of the property owners. It is anticipated that TIDA may elect to contract with future project partners or service providers to provide park management, recreational and cultural programming, and operations and maintenance services.

As noted below, the formation of a Parks Conservancy that would program and manage parks and open spaces may serve an important role as part of the Open Space program. TIDC and TIDA will continue to work with stakeholders and potential project partners to address open space programming, operations and management.

## PROJECT AND PROGRAM PARTNERS

In addition to existing on-island organizations there are opportunities for future coordination, partnerships, or concession opportunities with organizations and projects such as the following:

### Non-Profit Organizations

Urban Agriculture/Farm Operator  
Sports leagues and groups  
Ecology and habitat restoration groups  
Environmental education groups  
Museums/historical societies  
Neighborhood and Community Organizations  
Neighborhood and Community Associations  
Ecology and habitat restoration groups

### Concessions and Vendors

Sports and recreation facility operators  
Water access concessions such as kayaking  
Bicycle and skating (rental, bike sharing programs)  
Café and food vendors  
Event producers (performances and events)

### Potential Parks Conservancy

In addition to coordination with individual organizations, TIDA could form a Parks Conservancy to manage and operate all or some of the open space and recreational resources.

The Conservancy would be a private, 501c3 non-profit, park-benefit organization that raises funding independent of TIDA and manages it under a plan of action that is mutually agreed upon with TIDA. The Conservancy would not own any parkland; the land would continue to remain in the ownership of TIDA, and TIDA would retain ultimate authority over everything that happens there. The Conservancy could be involved with the whole suite of parkland activities, from planning through capital construction to maintenance. The relationship between TIDA and the Conservancy would be defined in a memorandum of understanding or a contract that defines the roles and responsibilities between TIDA and the conservancy.

### Public Agencies

The final park design will require coordination with a variety of public agencies, including the Bay Conservation and Development Commission (BCDC), the Association of Bay Area Governments Bay Trail Project, Mayors Office on Disability, and the State Lands Commission.

## OPERATIONS AND MANAGEMENT RESPONSIBILITIES

TICD has prepared a budget for the capital costs of the open space program described in this Open Space Plan. The costs, in constant 2010 dollars excluding any associated design, permitting, bonding and management costs, are estimated to be \$85.5M. Costs are expected to be spent proportionally in each phase of development, although the Developer's budget concludes that a disproportionate share (35%) of the capital will be spent in the first Major Phase of development on Treasure Island to support areas such as the Ferry Plaza and Clipper Cove Promenade.

TIDA and the Developer have developed a joint budgeting and funding process for the long-term management and maintenance of open space in the project. Funding for operating costs will come from a variety of sources including; developer subsidy; property taxes generated by the Community Facilities District financing; residential, commercial and master home owners' association dues; and interim operating revenues. This joint budgeting and funding process is explained in more detail in the Financing Plan attached to the DDA.

Approximately \$80.5M, in nominal dollars, has been estimated for the operating and maintenance budget during the project development period. Total funding sources, including as estimated \$18.5M funded through Developer subsidy payments, have been identified to be approximately \$92.9M, or \$12.4M more than the identified costs. Any excess in funds actually collected by TIDA above the required operating costs will be used to pay for other qualified project costs as described in the Financing Plan.

Long-term open space maintenance after the project has been developed is expected to be funded by a combination of property taxes collected through Community Facilities District financing and residential, commercial, and master home owners' association dues. As shown in the chart above, it is estimated that the total funding sources for operations and maintenance on an annual basis will be in excess of the actual funding need. In the event that funding sources are greater than the open space operating budget, any excess funds will be used to fund other eligible open space and community facilities improvements as directed by TIDA.

Open Space Type	Treasure Island Parks and Open Space: Operations & Management Entity / Funding Source					
	TIDA	Master HOA	Commercial District	3rd Party Operator	SF PUC / SF USD	SF DPW / HOAs
Northern Shoreline Park						
The Wilds						
Cityside Waterfront Park						
Eastern Shoreline Park & Pier 1						
Wetlands	Cost share w/ PUC				Cost share w/ T&A	
YBI Open Space						
YBI Hilltop Park						
YBI Beach Park						
Eastside Commons						
Cityside Neighborhood Parks / SPWs						
Waterfront Plaza						
Building 1 Plaza						
Clipper Cove Promenade						
Marina Plaza						
Cultural Park	Cost Share w/3rd Party			Control (w/3rd Party)		
Recreation Sports Park				Control (w/3rd Party)		
Urban Agricultural Park				Control (w/3rd Party)		
Cityside Waterfront Park - Sculptural Garden	Cost Share w/3rd Party			Control (w/3rd Party)		
Senior Officers' Quarters Historic District				Control (w/3rd Party)		
Treasure Island Sailing Center Open Space				Control (w/3rd Party)		
School Open Space						
PUC WWTP & 4-6 Acres						
Roadways and Streetscape Elements						

Parks + Open Space Areas Budget	Capital Costs		Operating Costs During Development		Long-Term Operating Costs (Annual) (1)	
Total Costs	\$	85,500,000	\$	80,500,000	\$	9,100,000
Costs funded by Interim Operating Budget			\$	5,500,000	\$	-
Costs funded by Residential & Commercial HOA			\$	35,200,000	\$	3,900,000
Costs funded by Developer Subsidy	\$	85,500,000	\$	18,500,000	\$	-
Available proceeds from CFD	\$	-	\$	33,700,000	\$	9,700,000
Total Funding Sources	\$	85,500,000	\$	92,900,000	\$	13,600,000
Funding Surplus / (Shortfall)	\$	-	\$	12,400,000	\$	4,500,000

(1) Long-Term Operating Costs are estimated costs in 2029 shown in inflated dollars

## EXISTING OPEN SPACE AND RECREATION FACILITIES

Treasure Island and Yerba Buena Island include several recreational and open space facilities that were constructed by the Navy, along with several new facilities that have been constructed or renovated by TIDA in partnership with non-profit organizations.

These include the existing Gym located in east central area of Treasure Island, several little league baseball fields located on the east side of the island, two Rugby fields, two Gaelic Football fields, and an existing softball field in the center part of the island adjacent the Job Corp campus.

In addition to these athletic facilities there are also several existing open space areas including the park area surrounding the existing Chapel and Library, the great lawn on the western edge of the island, and numerous smaller open spaces located in and around the existing housing area located at the northwestern corner of the island. On Yerba Buena Island, there are several small neighborhood park areas near the hilltop area, as well as large open space areas.

Many of the existing facilities and open spaces will be retained and operated throughout the early phases of infrastructure development. Several of the existing recreational field areas may also be incorporated in the Sports Park area based on further programming and design coordination during the design phases. The Gym facility will be retained as part of the Islands Open Space Facilities and integrated with the Sports Park as part of the final design phases.

To the extent feasible, TIDA will continue to work with existing recreational users to provide access and maintain operation of these facilities during build-out of the proposed project. TIDA will also continue to work with existing recreation users to identify potential opportunities for them to participate in the programming and operation of proposed recreational facilities.



EXISTING OPEN SPACES AND FACILITIES

- ① GAELIC FOOTBALL FIELDS
- ② LITTLE LEAGUE BASEBALL FIELD
- ③ ADULT BASEBALL / SOFTBALL FIELD
- ④ RUGBY FOOTBALL FIELDS
- ⑤ GYM BUILDING
- ⑥ CHAPEL AND LIBRARY
- ⑦ GREAT LAWN
- ⑧ PARK / PLAYGROUND
- ⑨ BOARD SAILING ACCESS
- ⑪ TI SAILING CENTER
- ⑪ MARINA
- ⑫ HILLTOP PARK



## OPEN SPACE PHASING

The phasing of open space improvements are defined in the Schedule of Performance and Phasing Plan. In general, phasing of open space improvements will concur with development of adjacent parcels. Open space improvements shall be completed to ensure a cohesive and complete experience and public realm upon completion of each Sub-Phase. During the development period, certain areas of the project site may be inaccessible due to construction activities. Temporary pedestrian improvements could also be provided to ensure continuous shoreline access, as well as circulation to existing and new open spaces and facilities where possible. Additionally, there may be opportunities to partner with community groups to utilize undeveloped park spaces and for interim uses such as community gardens, an urban farm, or a plant nursery that could grow native plants and street trees that could be used on the project or elsewhere in San Francisco.

The Project Phasing is divided into five Major Phases of development as identified in the Phasing Plan. Each Major Phase includes sub-phases. Refer to the Schedule of Performance and Phasing Plan for a detailed description of Phasing Goals and requirements. An illustrative version of the Major Phases relative to existing conditions is included in the following pages.

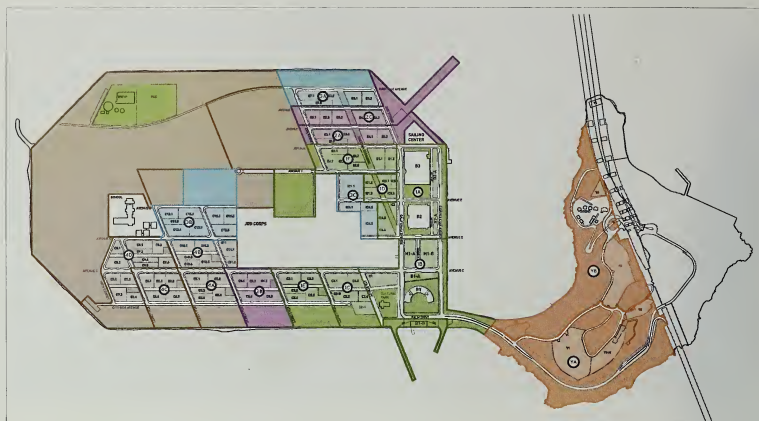







FIGURE 43: PHASING PLAN (subject to modification)

- |   |                 |   |               |
|---|-----------------|---|---------------|
|  | MAJOR PHASE YBI |  | MAJOR PHASE 3 |
|  | MAJOR PHASE 1   |  | MAJOR PHASE 4 |
|  | MAJOR PHASE 2   |   |               |



EXISTING CONDITIONS



MAJOR PHASE YERBA BUENA ISLAND

77



MAJOR PHASE 3



MAJOR PHASE 4

# Acknowledgments

Treasure Island Community Development

CMG Landscape Architecture

Mithun

Moffatt & Nichol

Perkins + Will

SOM

BKF Engineers



**DISPOSITION AND DEVELOPMENT AGREEMENT  
(TREASURE ISLAND/YERBA BUENA ISLAND)**

**FINANCING PLAN**



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## TABLE OF CONTENTS

	<u>Page</u>
1. OVERVIEW .....	1
1.1 Project Purposes; Project Accounts.....	1
1.2 Financing Sources for Qualified Project Costs.....	3
1.3 Distribution of Net Cash Flow. ....	4
1.4 [Reserved] .....	8
1.5 Consultants.....	8
1.6 Recordkeeping.....	9
1.7 Unreimbursed Authority Costs .....	10
2. COMMUNITY FACILITIES DISTRICT FINANCING .....	11
2.1 Formation of CFDs. ....	11
2.2 Scope of CFD-Financed Costs .....	12
2.3 Parameters of CFD Formation.....	12
2.4 Issuance of CFD Bonds.....	16
2.5 Use of Proceeds. ....	17
2.6 Miscellaneous CFD Provisions. ....	17
2.7 Ongoing Park Maintenance. ....	19
2.8 CFD Limitations. ....	21
3. TAX INCREMENT FINANCING.....	22
3.1 Pledge; Budget; Shortfall. ....	22
3.2 Net Available Increment.....	24
3.3 Housing Increment.....	25
3.4 Budget Procedures. ....	26
4. SUPPLEMENTAL OBLIGATION FINANCING, ALTERNATIVE FINANCING, GRANTS AND PUBLIC FINANCING GENERALLY .....	26
4.1 Supplemental Obligation Financing. Developer and Authority agree as follows:.....	26
4.2 Alternative Financing. ....	28
4.3 Grants.....	29
4.4 Provisions Applicable To All Public Financings.....	29
4.5 Terms of the Public Financings.....	31
4.6 Reimbursements for Qualified Project Costs. ....	31
5. POLICE, FIRE STATION AND PUBLIC PARKING FINANCING.....	33
5.1 Request for Financing From City. ....	33
6. INTERIM LEASE REVENUES.....	33

6.1	Distribution of Interim Lease Revenues .....	33
7.	INTERPRETATION; DEFINITIONS.....	34
7.1	Interpretation of Agreement .....	34
7.2	Defined Terms .....	34

## LIST OF EXHIBITS

Exhibit H-A.	Form of Acquisition and Reimbursement Agreement
Exhibit H-B.	Tax Allocation Agreement

**DISPOSITION AND DEVELOPMENT AGREEMENT  
(TREASURE ISLAND/YERBA BUENA ISLAND)**

**FINANCING PLAN**

This FINANCING PLAN implements and is part of the DDA. As used in this Financing Plan, capitalized terms used have the definitions given to them in Section 7.2.

**1. OVERVIEW.**

**1.1 Project Purposes; Project Accounts.**

(a) Funding Goals. Developer and Authority are entering into the DDA, which includes this Financing Plan, with the following financial goals for the Project (collectively, the "**Funding Goals**"):

(i) Ensure that the proposed Project is economically and fiscally feasible.

(ii) Fund the proposed Project's capital costs and on-going operation and maintenance costs relating to the redevelopment and long-term operation of the Project Site (including the Authority's administrative expenses, community facilities, open space maintenance and transportation) from revenues generated by the Project that would not exist but for the Project – including land sales, lease revenues, project-generated public financing revenues, and tax revenues created by the Project – in a manner that does not negatively impact the City's General Fund as measured over the life of the Redevelopment Plan.

(iii) Ensure that the provision of the community benefits and facilities described in the DDA are a priority of the Project.

(iv) Provide a mechanism for Authority and Navy participation in Net Cash Flow from the development of the Project in the event the Developer achieves a return in excess of agreed upon rates of return, and as consistent with the terms of the Conveyance Agreement.

(v) Incorporate the legal restrictions on the allowable uses of Gross Revenues arising under (i) the Conveyance Agreement and (ii) State law applicable to the Tidelands Trust.

(vi) Provide mechanisms and Funding Sources that will allow Developer to maximize the Developer's IRR.

(vii) Maximize Funding Sources available to finance Qualified Project Costs, by, among other things, to the extent reasonably feasible and consistent with this Financing Plan, using tax-exempt debt.

(viii) Minimize the costs to Developer (such as costs of credit

enhancement) associated with the Funding Sources to the extent reasonably feasible and to use debt requiring credit enhancement only with Developer's written consent.

(ix) Provide Housing Increment for the purposes and in the priorities set forth in Section 3.3(a).

(x) Implement sound and prudent public fiscal policies that protect the City's General Fund, Authority's general funds, and the City's and Authority's respective financial standings and fiduciary obligations, while operating within the constraints of this Financing Plan and, as applicable, the CCRL, the CFD Act, the CFD Goals, and Tax Laws.

(b) Purpose of Financing Plan. Developer and Authority acknowledge and agree that the purpose of this Financing Plan is to establish the contractual framework for mutual cooperation in achieving the Funding Goals necessary to implement the Project. Accordingly, Authority shall take all actions reasonably necessary, and Developer shall cooperate reasonably with Authority's efforts, to:

(i) form requested CFDs, adopt RMAs, and levy Project Special Taxes within CFDs and incur CFD Bonds to pay as applicable Qualified Project Costs and, when authorized pursuant to Section 2.8, Additional Community Facilities.

(ii) issue Tax Allocation Debt that is consistent with the Funding Goals and the Bonded Indebtedness Limit to pay Qualified Project Costs.

(iii) implement Supplemental Obligation Financing that is consistent with the Funding Goals to pay Qualified Project Costs.

(iv) allocate and apply Net Available Increment to pay Qualified Project Costs as provided in this Financing Plan.

(v) provide Housing Increment for the purposes and in the priorities set forth in Section 3.3(a).

(vi) finance Ongoing Park Maintenance in the manner described in this Financing Plan.

(c) Project Accounts.

(i) Developer shall, and shall require all Transferees to, establish and maintain one or more accounts (each, a "**Project Account**") with the San Francisco branches of financial institutions Approved by Authority to which all Gross Revenues shall be deposited. Financial institutions holding Project Accounts may be changed from time to time with Approval of Authority and Developer.

(ii) Developer shall, and shall require all Transferees: (A) not to commingle funds held in a Project Account with funds not related to the Project, including Affiliate accounts; and (B) to retain and make statements and all other records

related to Project Accounts available for Authority's review and audit in accordance with Section 1.7.

(d) Security Interest in Project Accounts. Provided (A) Developer has completed all Developer Construction Obligations and (B) Authority has received an IRR Statement showing that Developer has achieved a cumulative IRR of more than 22.5% at the end of the last Quarter of the Reporting Period covered by such IRR Statement, Developer and Authority shall cooperate reasonably with one another to provide Authority and the Navy with security for Developer's obligation to make payments in accordance with Section 1.3. Security will be in the form of perfected security interests in the Project Accounts superior to any other security interests, evidenced by a UCC-1 financing statement and a control agreement with each financial institution holding a Project Account, or by other arrangements Approved by both Developer and Authority.

## **1.2 Financing Sources for Qualified Project Costs.**

(a) Funding Sources. Sources of public funding ("Funding Sources") that will be used to pay or reimburse Developer for Qualified Project Costs include, but are not limited to: (A) Public Financing; (B) proceeds of Project Grants that Authority procures to the extent applied to Qualified Project Costs under Section 4.3; (C) Project Special Taxes and Remainder Taxes; (D) Net Available Increment; (E) Housing Increment to the extent authorized and applied under Section 3.3; and (F) Net Interim Lease Revenues described in Section 6.1(a)(iii). The sources identified in clauses (A)-(F) are collectively referred to in this Financing Plan as "**Funding Sources**."

(b) Benefit Findings. On the Reference Date, Authority found and determined that certain Project Costs are attributable to redevelopment (including Infrastructure and other Improvements) that is of primary benefit to the Redevelopment Plan Area. The Board of Supervisors and Authority Board may be required under the CCRL, including sections 33678 and 33445 of the CCRL, to make additional specific findings with respect to Authority's payment for certain publicly-owned Improvements. Authority shall assist in making such findings as and when requested by Developer, subject to applicable law.

(c) Limited Public Obligation. Developer acknowledges that: (A) in no event may the City's General Fund or any of Authority's general funds be obligated for Authority indebtedness under this Financing Plan without the City's or Authority's express written consent, as applicable; and (B) Authority must apply Net Available Increment only in compliance with the CCRL and this Financing Plan.

### **(d) Developer Sources.**

(i) Developer Contributions for Project Costs. Developer's sources for Project Costs include: (A) Developer equity; (B) Gross Revenues; (C) Developer construction and development financing; and (D) proceeds of Project Grants that the Developer procures.

(ii) Developer Construction Obligations. Developer acknowledges that the Developer Construction Obligations will not be affected if Qualified Project Costs exceed the actual Funding Sources.

### 1.3 Distribution of Net Cash Flow.

#### (a) Implementation of Conveyance Agreement.

(i) Under the Conveyance Agreement, Authority and the Navy agreed that the Net Cash Flow from the Project will be shared by the Navy after certain thresholds are met. In consideration for financing Qualified Project Costs with Net Available Increment, Authority shall also share in the Net Cash Flow after certain thresholds are met. This Section 1.3 implements (i) the provisions of the Conveyance Agreement and (ii) Authority and Developer's agreement with respect to the sharing of Net Cash Flow between them.

(ii) To the extent Authority has not paid the Initial Navy Consideration with Net Interim Lease Revenues pursuant to Section 6.1(a)(ii), in consideration for Authority financing Qualified Project Costs, Developer will pay to Navy, on behalf of Authority, the Initial Navy Consideration in the manner described in Section 4.2 of the Conveyance Agreement and any related late payment penalties caused by Developer's failure to make timely payments to Navy, on behalf of Authority, as such penalties are imposed pursuant to Section 4.3.4 of the Conveyance Agreement.

(b) Calculation of IRR. Within forty-five (45) days after the expiration of the eighth full calendar Quarter occurring after the Initial Closing and forty-five (45) days after the expiration of each subsequent Quarter during the Term of the Conveyance Agreement with respect to the Navy, and until the Cash Flow Distribution Termination Date with respect to the Authority, Developer shall submit a reasonably detailed statement to the Authority and the Navy (the "**IRR Statement**") accompanied by an Accounting consistent with the Conveyance Agreement showing (i) for any IRR Statement provided during the Initial Consideration Term, the cumulative IRR achieved as of the end of each of the eight (8) immediately prior Quarters, and (ii) for any IRR Statement provided after expiration of the Initial Consideration Term, the cumulative IRR achieved as of the end of each of the six (6) prior Quarters (the eight or six Quarter Period, as applicable, the "**Reporting Period**"). The IRR Statement shall also calculate the average IRR over the Reporting Period, calculated by adding the cumulative IRR shown for each Quarter in the Reporting Period and dividing the total by the number of Quarters in the Reporting Period.

#### (c) Share of Net Cash Flow.

(i) Until the IRR Statement shows that Developer has achieved an average IRR of more than 18.00% over the Reporting Period, all Net Cash Flow shall be distributed to Developer.

(ii) If the IRR Statement shows that Developer has achieved an average IRR of more than 18.00% over the applicable Reporting Period, then



Developer, on behalf of Authority, shall within forty-five (45) days after the end of the last Quarter of the applicable Reporting Period until the earlier of (A) such time as the aggregate amount of First Tier Payments (as defined below) equals Fifty Million Dollars (\$50,000,000) and (B) the Termination Date, pay the Navy an amount that would reduce the cumulative IRR as of the end of the Reporting Period to 18.00% (each, a "**First Tier Payment**"). Developer shall pay to Navy on behalf of Authority any related late payment penalties caused by Developer's failure to make timely payments to Navy, on behalf of Authority, as such penalties are imposed pursuant to Section 4.3.4 of the Conveyance Agreement.

(iii) If an IRR Statement shows that Developer has achieved an average IRR of more than 22.5% within the applicable Reporting Period occurring after considering all First Tier Payments, then Developer, on behalf of Authority, shall within forty-five (45) days after the end of the last Quarter of the applicable Reporting Period, for the periods specified below, pay (A) during the Term, to the Navy 35% of the total amount of Net Cash Flow that would reduce the cumulative IRR to 22.5% as of the end of the Reporting Period (each, a "**Second Tier Payment**") and (B) to Authority, (i) during the Term, 10% of the total amount of Net Cash Flow and (ii) after the Term and continuing until the Cash Flow Distribution Termination Date, 45% of the total amount of Net Cash Flow, in each case that would reduce the cumulative IRR to 22.5% as of the end of the Reporting Period (an "**Authority Second Tier Payment**"). Developer shall pay to Navy, on behalf of Authority, any related late payment penalties caused by Developer's failure to make timely payments to Navy, on behalf of Authority, as such penalties are imposed pursuant to Section 4.3.4 of the Conveyance Agreement.

(iv) If an IRR Statement shows that Developer has achieved an average IRR of more than 25.0% within the applicable Reporting Period occurring after considering all First Tier Payments, Second Tier Payments, and Authority Second Tier Payments, then Developer shall within forty-five (45) days after the end of the last Quarter of the applicable Reporting Period until the Cash Flow Distribution Termination Date, pay Authority an additional 5% of the total amount of Net Cash Flow that would reduce the cumulative IRR to 25.0% as of the end of the Reporting Period (each, an "**Authority Third Tier Payment**").

(d) Accounting. Developer shall maintain accurate books and records specific to the Project setting forth all components used for determining the Additional Consideration and the Authority Consideration, including, without limitation, each component of Net Cash Flow, and to determine the amount of Redevelopment Plan Redesign Costs and credits against Initial Navy Consideration and Additional Consideration. Each IRR Statement submitted by Developer shall be accompanied by a complete Accounting. The Accounting shall be in conformance with GAAP where applicable, or with respect to the IRR Statement, in conformance with appropriate industry standards.

(e) Reconciliation of Final Conveyance Agreement IRR.

(i) Developer shall, within one hundred and eighty (180) days

after the Termination Date, submit a final Accounting to Authority and the Navy, showing the Developer's cumulative IRR for the entire term of the Project through the Termination Date (the "**Final Conveyance Agreement IRR**") and all payments of Additional Consideration made to the Navy on behalf of Authority hereunder during the period specified in Section 1.3(c) and all payments of Authority Consideration made to Authority hereunder during the same period (the "**Final Conveyance Agreement IRR Statement**"). The Final Conveyance Agreement IRR Statement and Accounting shall be performed and certified by an independent CPA in accordance with appropriate industry standards.

(ii) If the Final Conveyance Agreement IRR Statement and Accounting discloses that the Final Conveyance Agreement IRR exceeded 18% but the First Tier Payments to the Navy were less than the amount required by Section 1.3(c)(ii), Developer shall pay to the Navy on behalf of Authority the amount of Net Cash Flow necessary to reduce the Final Conveyance Agreement IRR to 18%, so long as the total of all First Tier Payments does not exceed the amount required by Section 1.3(c)(ii).

(iii) If the Final Conveyance Agreement IRR Statement and Accounting discloses that the Final Conveyance Agreement IRR exceeded 22.5%, but the Second Tier Payments totaled less than 35% of Net Cash Flow for the Project during the Term above a 22.5% Final Conveyance Agreement IRR, then Developer shall cause to be paid to Navy on behalf of Authority the amount of Net Cash Flow necessary to raise the total of Second Tier Payments to equal 35% of all Net Cash Flow during the Term above a 22.5% Final Conveyance Agreement IRR.

(iv) If the Final Conveyance Agreement IRR Statement and Accounting discloses that the Final Conveyance Agreement IRR exceeded 22.5%, but Authority Second Tier Payments during the Term totaled less than 10% of Net Cash Flow for the Project during the Term above a 22.5% Final Conveyance Agreement IRR, then Developer shall cause to be paid to Authority the amount of Net Cash Flow necessary to raise the total of Authority Second Tier Payments during the Term to equal 10% of all Net Cash Flow during the Term above a 22.5% Final Conveyance Agreement IRR.

(v) If the Final Conveyance Agreement IRR Statement and Accounting discloses that the Final Conveyance Agreement IRR exceeded 25.0%, but Authority Third Tier Payments during the Term totaled less than 5% of Net Cash Flow for the Project during the Term above a 25.0% Final Conveyance Agreement IRR, then Developer shall cause to be paid to Authority the amount of Net Cash Flow necessary to raise the total of Authority Third Tier Payments during the Term to equal 5% of all Net Cash Flow during the Term above a 25.0% Final Conveyance Agreement IRR.

(f) Reconciliation of Final IRR.

(i) Developer shall, within one hundred and eighty (180) days after the Cash Flow Distribution Termination Date, submit a final Accounting to

Authority, showing the Developer's cumulative IRR for the entire term of the Project through the Cash Flow Distribution Termination Date (the "Final IRR") and all payments of Authority Consideration made to Authority hereunder (the "Final IRR Statement"). The Final IRR Statement and Accounting shall be performed and certified by an independent CPA in accordance with appropriate industry standards.

(ii) If the Final IRR Statement and Accounting discloses that the Final IRR exceeded 22.5%, but during the period beginning one day after the Term and continuing until the Cash Flow Distribution Termination Date, Authority Second Tier Payments hereunder totaled less than 45% of Net Cash Flow for the Project above a 22.5% Final IRR during the period beginning one day after the Term and continuing until the Cash Flow Distribution Termination Date, then Developer shall cause to be paid to Authority the amount of Net Cash Flow necessary to raise the total of Authority Second Tier Payments to equal 45% of all Net Cash Flow above a 22.5% Final IRR for the period beginning one day after the Term and continuing until the Cash Flow Distribution Termination Date .

(iii) If the Final IRR Statement and Accounting discloses that the Final IRR exceeded 25.0%, but Authority Third Tier Payments hereunder totaled less than 5% of Net Cash Flow for the Project above a 25.0% Final IRR during the period beginning one day after the Term and continuing until the Cash Flow Distribution Termination Date, then Developer shall cause to be paid to Authority the amount of Net Cash Flow necessary to raise the total of Authority Third Tier Payments to equal 5% of all Net Cash Flow above a 25.0% Final IRR during the period beginning one day after the Term and continuing until the Cash Flow Distribution Termination Date.

(g) Reconciliation of Redevelopment Plan Redesign Costs. Within one hundred eighty (180) days after completion of all planning, entitlement, design and rebuilding work required under the Redesign Plan, as evidenced by City acceptance of all public improvements and final building inspection sign-off for all improvements as identified in the Work Program, Developer shall provide Authority and the Navy with a statement that includes an Accounting of all Redevelopment Plan Redesign Costs actually incurred by Developer and Authority and a statement of the amount to be credited against Initial Consideration in accordance with Section 4.3.6.2 of the Conveyance Agreement. The Accounting shall be performed and certified by an independent CPA in accordance with GAAP.

(h) Submission of IRR Statements. Developer shall continue to submit the IRR Statement and Accounting (A) to the Navy and the Authority until the Termination Date, and (B) to the Authority only following the Termination Date until the Cash Flow Distribution Termination Date.

(i) Compliance with Conveyance Agreement. The Developer shall provide Authority with all information and shall cooperate with Authority to the extent necessary for Authority to comply with its reporting and audit obligations under the Conveyance Agreement.

(j) Audit. Authority shall be entitled from time to time to audit the Developer's books, records, and accounts pertaining to the Net Cash Flow and all components thereof, the payment of Additional Consideration, the calculation and payment relating to the Authority Second Tier Payments and Authority Third Tier Payments, the calculation, payments and credits relating to the Redevelopment Plan Redesign Costs, and shall be entitled to allow the Navy to undertake an audit to the extent described in Section 4.3.7 of the Conveyance Agreement. Such audit shall be conducted during normal business hours upon ten (10) business days notice at the principal place of business of Developer and other places where records are kept. Authority shall provide Developer with copies of any audit performed. If it shall be determined as a result of such audit that there has been a deficiency in the payment of any Additional Consideration, Authority Second Tier Payments and Authority Third Tier Payments, the Developer shall immediately pay any such deficiency with interest at the Default Interest Rate. In addition, if it shall be determined as a result of such audit that an Accounting has understated the Net Cash Flow for the applicable period by more than five percent (5%), Developer shall be required to pay, in addition to interest as aforesaid, all of Authority's costs and expenses and all of the Navy's costs and expenses connected with the audit or review of Developer's accounts and records for the Project. All such payments shall be paid within thirty (30) days of receipt of written notice to Authority of such underpayment and such audit costs shall not be allowed as a Development Cost. The issue of whether Net Cash Flow is understated or overstated by five percent (5%) or more may be arbitrated according to the procedures in section 15 of the DDA, but the arbitration must be conducted by arbitrators who have at least ten (10) years' experience in arbitrating disputes involving complex financial accounting.

(k) Excess Land Appreciation Structure Profits. To the extent it is commercially reasonable to do so and consistent with market practices for each product type at the time, all sales agreements, leases or subleases, as applicable, between a Vertical Developer and Developer will require the Vertical Developer to pay Developer a percentage of any net profits above a mutually agreed-upon forecasted rate arising from the Excess Land Appreciation Structure. The net profits from the Excess Land Appreciation Structure actually received by Developer shall constitute Gross Revenues.

#### 1.4 [Reserved]

#### 1.5 Consultants.

(a) Authority Consultants. Authority, following consultation with Developer, will select any consultants necessary to implement this Financing Plan, including the formation of any CFD and the issuance of any Public Financing. To the extent that similar consultants are retained customarily by local agencies in California that engage in public financing similar or of similar complexity to the Public Financing, Authority consultants may include special tax consultants, tax increment fiscal consultants, appraisers, financial advisors, bond underwriters, absorption consultants, bond counsel, bond trustees, escrow agents, and escrow verification agents.

Authority's reasonable out-of-pocket costs that are customarily paid by local agencies in the State for Public Financing consultants will be reimbursed from the proceeds of a Public Financing to the extent permitted under the CFD Act, the CCRL, applicable Tax Laws, and other governing law. To the extent Authority is not so reimbursed, such unreimbursed consultant costs will be Authority Costs under the DDA.

(b) Developer Consultants. Developer may engage its own consultants to advise it on matters related to this Financing Plan or any Public Financing, and its reasonable out-of-pocket costs will be reimbursed from the proceeds of a Public Financing to the extent permitted under the CFD Act, the CCRL, applicable Tax Laws, and other governing law. To the extent Developer is not reimbursed from the proceeds of a Public Financing, such costs will be Soft Costs.

## **1.6 Recordkeeping.**

### **(a) Annual Reports.**

(i) Commencing as of the date that Developer obtains the Major Phase Approval for the Initial Major Phase and ending on the later of (A) the date on which Developer has received the final Certificate of Completion for all of the Infrastructure and (B) the earlier of (i) the date on which Developer has been reimbursed for all Qualified Project Costs and (ii) the date on which there are no further Gross Revenues available to reimburse Developer for Qualified Project Costs, Developer shall prepare and deliver to the Authority an annual financial report on the Project no later than four (4) months following the end of each Developer Fiscal Year for which a report is due (each, an "**Annual Report**"). If Developer obtains a Major Phase Approval less than six (6) months before the end of a Developer Fiscal Year, Developer may include reporting for that Major Phase in the Annual Report for the next Developer Fiscal Year. If any Annual Report shows any material discrepancy, then Developer must correct the discrepancy in its Records, and Developer and the Authority agree to meet and confer on the best method for correcting any overpayment or underpayment by the end of the next Developer Fiscal Quarter.

(ii) Annual Reports must include the following information, reported separately for each Major Phase for which a Major Phase Approval has been obtained and in the aggregate for the Project as a whole: (A) updated estimates of and actual Project Costs, Qualified Project Costs and Gross Revenues; (B) if applicable, variances from the prior Annual Report; (C) a statement reflecting the application of any Net Cash Flow that Developer has received during the prior Developer Fiscal Year; (D) a statement of Qualified Project Costs reimbursed from Funding Sources; (E) a statement of Qualified Project Costs previously incurred but not yet reimbursed from the Funding Sources; (F) new development expected to occur or that is occurring, the assessed value of which is expected to be included on the secured real property tax roll for the next Authority Fiscal Year; and (G) any sales of Lots under article 17 of the DDA that are expected to occur and the assessed value of which is expected to be included on the secured real property tax roll for the next Authority Fiscal Year.



(iii) Developer's Annual Report must cover the entire Project, even if Developer has Transferred part or all of its interest in a Major Phase or Sub-Phase to a Transferee.

(iv) Developer's obligation to provide Annual Reports will terminate as to any portion of the Project as to which the DDA is terminated after Developer has provided to the Authority the Annual Report covering the Developer Fiscal Year during which the termination took effect.

(b) Developer Books and Records. Developer shall maintain books and records of all: (i) Gross Revenues; (ii) application of Funding Sources to Qualified Project Costs; and (iii) Project Costs, organized by Major Phases, in accordance with generally accepted accounting principles consistently applied, or in another auditable form Approved by Authority (the "**Records**"). Developer shall maintain Records for each Major Phase in the City or at another location Approved by the Authority for at least four (4) years after the applicable Major Phase closing date, subject to Section 1.6(g). After reasonable notice, Developer shall make the Records available to Authority at reasonable times.

(c) Authority Records. Authority shall provide copies of its annual Statement of Indebtedness and audited financial statements relating to the Redevelopment Plan Area to Developer as soon as practicable following their public filing or release.

(d) Accounting. Developer and Authority will separately track the use of all Funding Sources and any revenues generated from the Project as a whole and from the Tidelands Trust lands in order to ensure that they are used only for purposes consistent with this Financing Plan and applicable law.

**1.7 Unreimbursed Authority Costs.** If: (a) Developer does not pay when due any Authority Costs, Developer fails to satisfy any financial obligation under the DDA, or Developer commits a Material Breach under the DDA; (b) Authority obtains a final judgment for the payment of any related amount under article 15 of the DDA; and (c) Authority makes demand for payment of the amount of the final arbitration judgment on any Adequate Security, but does not receive payment within thirty (30) days after Authority's written demand, then Authority may, to the extent permitted under applicable law, recover from any available proceeds of a Public Financing the amount of the final arbitration judgment, plus Authority's costs of collection and interest at the rate of ten percent (10%) per annum of the amount of the final judgment, calculated from the date the payment was due until paid in full, compounded annually. This provision will not apply to Authority Costs to be paid from the proceeds of any Public Financing as provided in the applicable Indenture or other governing documents, or from Project Grants according to their terms.

1.8. [Reserved]

## 2. COMMUNITY FACILITIES DISTRICT FINANCING

### 2.1 Formation of CFDs.

(a) Formation. Authority Board will establish all CFDs from time to time as Developer acquires Sub-Phases under the DDA. All CFDs will be formed and administered to achieve the Funding Goals and in accordance with the CFD Act and the CFD Goals. Developer acknowledges that the CFD Goals will prevail over any inconsistent terms in this Financing Plan, unless Authority Board in its sole discretion Approves a waiver of the CFD Goals. Any CFD may include separate Improvement Areas and tax zones. In addition, Developer and Authority may agree to identify property for future annexation and additional public capital facilities for the Project to be financed under the CFD Act in the CFD formation documents.

(b) Taxable Parcels. Developer and Authority intend that Project Special Taxes will be levied against all Taxable Parcels for the purposes described in this Financing Plan and agree that all Exempt Parcels will be exempt from Project Special Taxes.

(c) Petition.

(i) After Developer takes title to a Sub-Phase, Developer may petition Authority under the CFD Act from time to time to establish one or more CFDs within the Sub-Phase. In its petition, Developer may include proposed specifications for the CFD, including Assigned Project Special Tax Rates, Project Special Tax rates, CFD boundaries and any proposed Improvement Areas and tax zones within the CFD (which may include one or more Sub-Phases or Major Phases), the identity of any property to be annexed into the CFD at a later date, the total tax burden that will result from the imposition of the Project Special Taxes (subject to the 2% Limitation for Taxable Residential Units), and other provisions. Developer's proposed specifications will be based on Developer's development plans, market analysis, and required preferences, but in all cases will be subject to this Financing Plan, the Funding Goals and the CFD Goals.

(ii) Following Authority's receipt of a petition, Developer and Authority will meet with Authority's Public Financing consultants to determine reasonable and appropriate terms of the proposed CFD that are consistent with the Funding Goals.

(d) Authorized Uses. Each CFD shall be authorized to finance all of the Qualified Project Costs, Additional Community Facilities, and Ongoing Park Maintenance, irrespective of the geographic location of the improvements financed or maintained.

(e) Joint Community Facilities Agreements. Under the CFD Act, Authority may be required to enter into a joint community facilities agreement with another public agency that will own or operate any of the Infrastructure. Authority and



the City have agreed that the Tax Allocation Agreement, which will be executed in connection with the DDA, is a joint community facilities agreement under the CFD Act for all of the Infrastructure to be financed by CFDs and owned or operated by the City. Authority and Developer agree that they will take all steps necessary to procure the authorization and execution of any other required joint community facilities agreement with a public agency other than Authority or the City before the issuance of any CFD Bonds that will finance Infrastructure that will be owned or operated by such public agency other than Authority or the City.

(f) Notice of Special Tax Lien. Project Special Taxes will be secured by recordation in the Official Records of continuing liens against all Taxable Parcels in the applicable CFD.

**2.2 Scope of CFD-Financed Costs.** A CFD may finance only Qualified Project Costs, Additional Community Facilities, and Ongoing Park Maintenance that: (a) are financeable under the CFD Act; and (b) qualify under Tax Laws, if CFD Bonds are issued and if CFD Bonds are issued as tax-exempt bonds.

**2.3 Parameters of CFD Formation.**

(a) Cooperation. Developer and Authority agree to cooperate reasonably in developing an RMA for each CFD that is consistent with this Financing Plan and, to the extent consistent with this Financing Plan, Developer's petition. Developer and Authority will each use good-faith reasonable efforts at all times to furnish timely to the other, or to obtain and then furnish to the other, any information necessary to develop an RMA, such as legal boundaries of the property to be included and Developer's plans for the types, sizes, numbers, and timing for construction of Buildings, within the applicable CFD. Each CFD will be subject to its own RMA and authorized bonded indebtedness limit.

(b) RMA Consultants and Approval. The RMA for any CFD will be: (i) developed by Authority's special tax consultant, in consultation with Developer and Authority's staff and other consultants; (ii) consistent with Developer's petition to the extent consistent with this Financing Plan; and (iii) subject to Authority Board Approval in the resolution of formation. Project Special Taxes on any Taxable Parcel must not exceed any applicable maximum rate specified in the CFD Goals and this Financing Plan, unless otherwise Approved by Authority Board and Developer.

(c) Priority Administrative Costs. In the formation process for each CFD, Authority and Developer will agree on the amount of annual CFD administrative costs that will have first priority for payment by Project Special Tax based on: (i) actual administration costs of other community facilities districts of the City and Agency; (ii) the CFD's complexity and size; and (iii) cumulative administration costs for all anticipated CFDs for the Project. The contracts for consultants administering the CFDs and the calculation of any Authority or City staff time deemed administration expenses will be determined in accordance with article 19 of the DDA.

(d) Assigned Project Special Tax Rates for Developed Property. Each RMA will specify Project Special Tax rates for Developed Property within the CFD (each an "**Assigned Project Special Tax Rate**"). The Assigned Project Special Tax Rates for Developed Property may vary based on sizes, densities, types of Buildings to be constructed, and other relevant factors when the CFD is formed. Each RMA will establish Assigned Project Special Tax Rates assuming that any First Tranche CFD Bonds issued will have a debt service coverage-ratio of one hundred ten percent (110%), unless Authority and Developer Approve a higher ratio to market the First Tranche CFD Bonds effectively.

(e) Total Tax Obligation. The Assigned Project Special Tax Rates will be set so that the Total Tax Obligation on any Taxable Residential Unit within a CFD will not exceed two percent (2%) of the projected sales price of that Taxable Residential Unit calculated at the time of the resolution of intention to form the CFD (the "**2% Limitation**"). If an RMA is modified to increase the Project Special Tax rates, the Assigned Project Special Tax Rates will be modified so that the Total Tax Obligation on any Taxable Residential Unit within a CFD does not exceed the 2% Limitation when the proposed modification goes into effect. The 2% Limitation will not apply to non-residential property in a CFD.

(f) Classification of Assessor's Parcels. Each RMA will provide for the taxation of Developed Property and Undeveloped Property. Each RMA will identify all Exempt Parcels, which will be exempt from payment of Project Special Taxes.

(g) Backup and Maximum Project Special Tax Rates. Each RMA will provide for: (i) backup Project Special Tax rates that will be applied to each Taxable Parcel in a tract map, Improvement Area, tax zone, condominium plan, or other identifiable area on Developed Property (each a "**Backup Project Special Tax Rate**"); and (ii) maximum Project Special Tax rates on Developed Property and Undeveloped Property (each a "**Maximum Project Special Tax Rate**"). The Maximum Project Special Tax Rate for a Taxable Parcel of Developed Property will be the greater of the applicable Assigned Project Special Tax Rate or the applicable Backup Project Special Tax Rate. Developer and Authority will structure the Backup Project Special Tax Rates and Maximum Project Special Tax Rates for a CFD to be consistent with the funding goals established for the CFD, considering Developer's development plans and preferences for structuring the Project Special Tax rates within the applicable CFD, and this Financing Plan.

(h) Escalation of Special Tax Rates. The total projected taxes levied for a CFD must not exceed any maximum specified in the CFD Act. Each RMA will provide for annual increases in the Project Special Tax rates allowed under CFD Act unless Developer and Authority agree otherwise.

(i) Priority for Annual Levy of Special Taxes. Each RMA will provide for the levy of Project Special Taxes to fund debt service (not including capitalized interest), administrative costs, and Qualified Project Costs and, when authorized pursuant to Section 2.8, Additional Community Facilities to be financed by the CFD

each year of its term (collectively, the “**Special Tax Requirement**”) according to the priorities set in the Indenture, until the Special Tax Requirement is fully satisfied. Each RMA must reflect the priorities set forth below:

(i) First, Project Special Taxes will be levied on each Taxable Parcel of Developed Property at the applicable Assigned Project Special Tax Rate, regardless of whether Authority has issued CFD Bonds or the debt service requirements for any existing CFD Bonds, before applying any capitalized interest.

(ii) Second, to the extent the funds to be collected under clause (i) will not be sufficient to satisfy the Special Tax Requirement in full after application of any capitalized interest, Project Special Taxes will be levied proportionately on each Taxable Parcel of Subsequent Owner Property, up to one hundred percent (100%) of the applicable Maximum Project Special Tax Rate.

(iii) Third, to the extent the funds to be collected under clauses (i) and (ii) will not be sufficient to satisfy the Special Tax Requirement in full after application of any capitalized interest, Project Special Taxes will be levied proportionately on each Taxable Parcel of Undeveloped Property that is not Subsequent Owner Property, up to one hundred percent (100%) of the applicable Maximum Project Special Tax Rate.

(iv) Fourth, to the extent the funds to be collected under clauses (i), (ii), and (iii) will not be sufficient to satisfy the Special Tax Requirement in full after application of any capitalized interest, additional Project Special Taxes will be levied proportionately on each Taxable Parcel of Developed Property, so long as the total levy on Developed Property under clauses (i) and (iv) does not exceed the applicable Maximum Project Special Tax Rate.

(j) Use of Remainder Taxes. Each RMA will provide that Remainder Taxes may be used to finance Ongoing Park Maintenance and Qualified Project Costs. For each CFD, annually, on the day following each Principal Payment Date for such CFD, all Remainder Taxes for such CFD will be deposited in the applicable Remainder Taxes Project Account. With respect to all CFDs:

(i) Before the CFD Conversion Date for all CFDs, annually, on or before October 1 of each year, Remainder Taxes for all CFDs shall be applied in the following order of priority:

(A) if (1) the Estimated Maintenance Cost shown in the Maintenance Budget for the next succeeding Maintenance Period (as described in Section 2.7) is equal to or in excess of the total amount of the funds in the Remainder Taxes Project Accounts created for all CFDs, then all of such amounts in the Remainder Taxes Project Accounts will be transferred to the Ongoing Maintenance Account; or (2) the total amount of the funds in the Remainder Taxes Project

Accounts created for all CFDs is greater than the Estimated Maintenance Cost shown in the Maintenance Budget for the next succeeding Maintenance Period (as described in Section 2.7), then the amount of the Estimated Maintenance Cost shall be transferred from the Remainder Taxes Project Accounts to the Ongoing Maintenance Account pro rata based on the amount of Remainder Taxes on deposit in each Remainder Taxes Project Account.

(B) remaining funds in the Remainder Taxes Project Account created for such CFD, if any, will be transferred to a CFD Project Account and applied, from time to time at Developer's request, to finance Qualified Project Costs.

(ii) After the CFD Conversion Date for all CFDs, annually, on or before October 1 of each year, Remainder Taxes for all CFDs shall be applied in the following order of priority:

(A) if (1) the Estimated Maintenance Cost shown in the Maintenance Budget for the next succeeding Maintenance Period (as described in Section 2.7) is equal to or in excess of the total amount of the funds in the Remainder Taxes Project Accounts created for all CFDs, then all of such amounts in the Remainder Taxes Project Accounts will be transferred to the Ongoing Maintenance Account; or (2) the total amount of the funds in the Remainder Taxes Project Accounts created for all CFDs is greater than the Estimated Maintenance Cost shown in the Maintenance Budget for the next succeeding Maintenance Period (as described in Section 2.7), then the amount of the Estimated Maintenance Cost shall be transferred to the Ongoing Maintenance Account from the Remainder Taxes Project Accounts, with the amounts to be transferred from each Remainder Taxes Project Account to be determined by Authority.

(B) remaining funds in the Remainder Taxes Project Account created for such CFD, if any, will be transferred to a CFD Project Account and applied, from time to time at Authority's discretion, to finance Additional Community Facilities or any other purpose allowed under the CFD Act.

(iii) Remainder Taxes deposited in the Remainder Taxes Project Accounts or subsequently transferred to the Ongoing Maintenance Account and CFD Project Account will not be deemed or construed to be pledged for payment of debt service on any CFD Bonds, and neither Developer nor any other Person will have the right to demand or require that Authority use funds in the Remainder Taxes Project Accounts, the Ongoing Maintenance Account, or the CFD Project Account to pay debt

service.

(iv) The distribution of Remainder Taxes to fund Ongoing Park Maintenance, Qualified Project Costs, and Additional Community Facilities as provided in this Financing Plan will be authorized in the RMA and Indenture for the related CFD Bonds.

(k) Prepayment. The RMA will include provisions allowing a property owner within the CFD that is not in default of its obligation to pay Project Special Taxes to prepay Project Special Taxes in full or in part based on a formula that will require payment of the property owner's anticipated total Project Special Tax obligation; provided, however, that prepayment shall not be allowed if it impacts the financing of Ongoing Park Maintenance. Prepaid Project Special Taxes will be placed in a segregated account in accordance with the applicable Indenture. The RMA and the Indenture will specify the use of prepaid Project Special Taxes.

(l) Amendment to RMA. Each RMA must be consistent with this Financing Plan. Nothing in this Financing Plan will prevent an amendment of any RMA for a CFD under its terms or under Change Proceedings.

(m) Reducing Project Special Tax Rates Before Issuance of First Tranche CFD Bonds. An RMA may contain a provision that allows Developer to request that the Total Tax Obligation be recalculated and Project Special Tax rates be reduced before any First Tranche CFD Bonds are issued so that the Total Tax Obligation does not exceed two percent (2%) of the actual or projected sales prices of Taxable Residential Units at the time of recalculation. Subject to the CFD Act, but only if expressly permitted and defined in the RMA, after consultation with Developer regarding its request, Authority may elect to reduce Project Special Tax rates in a CFD administratively without the vote of the qualified CFD electors before First Tranche CFD Bonds for such CFD are issued. If expressly permitted and defined in the RMA, a reduction in one taxing category does not have to be proportionate to the reduction in any other taxing category (i.e., disproportionate reductions may be expressly allowed in the RMA). If the Maximum Project Special Tax Rate is permanently reduced, Authority will record timely an appropriate instrument in the Official Records.

## **2.4 Issuance of CFD Bonds.**

(a) Issuance. Subject to Authority Board Approval and Sections 4.4 and 4.5, Authority, on behalf of the CFD, intends to issue CFD Bonds for purposes of this Financing Plan. Developer may submit written requests that Authority issue First Tranche CFD Bonds, specifying requested issuance dates, amounts, and main financing terms. Following Developer's request, Developer and Authority will meet with Authority's public financing consultants to determine reasonable and appropriate issuance dates, amounts, and main financing terms that are consistent with the Funding Goals.



(b) Payment Dates. So that Remainder Taxes may be calculated on the same date for all CFDs and CFD Bonds, each issue of CFD Bonds shall have interest payment dates of March 1 and September 1, with principal due on September 1.

(c) Value-to-Lien Ratio. The appraised or assessed value-to-lien ratio required for each First Tranche CFD Bond issue will be three to one (3:1), unless otherwise required by the CFD Act, the CFD Goals or the mutual agreement of Developer and Authority.

(d) Coverage Ratio. To preserve the ability to finance Ongoing Park Maintenance, an issue of First Tranche CFD Bonds will not have a debt service coverage-ratio of less than one hundred ten percent (110%), unless otherwise agreed to by Authority.

(e) Term. Subject to Section 2.8, First Tranche CFD Bonds will have a term of not less than thirty (30) years and not more than forty (40) years unless Developer and Authority agree otherwise.

(f) Second Tranche CFD Bonds. After the CFD Conversion Date for a CFD, Authority has the right in its sole discretion to issue Second Tranche CFD Bonds in such CFD as set forth in this Financing Plan.

## **2.5 Use of Proceeds.**

(a) First Tranche CFD Bond Proceeds. Subject to Tax Laws, the CFD Act, and the CFD Goals, First Tranche CFD Bond proceeds will be used in the following order of priority: (i) to fund required reserves and pay costs of issuance; (ii) to fund capitalized interest amounts, if any; (iii) to pay Qualified Pre-Development Costs; and (iv) to pay outstanding Qualified Project Costs and, when authorized pursuant to Section 2.8, Additional Community Facilities. The remainder will be deposited into the CFD Bonds Project Account as designated in the Indenture and must be used only to pay for Qualified Project Costs and, when authorized pursuant to Section 2.8, Additional Community Facilities.

(b) Qualified Project Costs; Additional Community Facilities. By this Financing Plan, Authority pledges the proceeds of First Tranche CFD Bonds on deposit in CFD Bonds Project Accounts or as otherwise provided in the applicable Indenture and all Remainder Taxes on deposit in the CFD Project Accounts to finance Qualified Project Costs and, when authorized pursuant to Section 2.8, Additional Community Facilities. In furtherance of this pledge, Authority shall levy Project Special Taxes in each Authority Fiscal Year in accordance with the applicable RMA and this Financing Plan.

## **2.6 Miscellaneous CFD Provisions.**

(a) Change Proceedings. Subject to the limitations in this Financing Plan, including the Funding Goals and Sections 4.3 and 4.4, and so long as the

proposed changes do not adversely affect the ability of Authority to issue Second Tranche CFD Bonds or apply the Remainder Taxes to pay Ongoing Park Maintenance and Additional Community Facilities pursuant to Section 2.8, Authority will not reject unreasonably Developer's request to conduct Change Proceedings under the CFD Act to: (i) make any changes to an RMA, including amending the rates and method of apportionment of Project Special Taxes; (ii) increase or decrease the authorized bonded indebtedness limit within a CFD; (iii) annex property into a CFD; (iv) add additional public capital facilities for the Project; or (v) take other actions reasonably requested by Developer. For purposes of this Section 2.6(a), Developer acknowledges that any reduction in the Project Special Tax rates set forth in an RMA through Change Proceedings shall require the consent of Authority, which may be granted in its discretion. Except as set forth in the previous sentence, for purposes of this Section 2.6(a), Authority agrees that none of the following changes will be deemed to adversely affect the ability of Authority to issue Second Tranche CFD Bonds or apply the Remainder Taxes to Ongoing Park Maintenance or Additional Community Facilities pursuant to Section 2.8: (x) increasing the Project Special Tax rates in an RMA for any land use classification; (y) increasing the authorized bonded indebtedness limit; and (z) authorizing the financing of additional public capital facilities for the Project.

(b) Maintaining Levy of CFD Financing. Under section 3 of article XIIC of the California Constitution, voters may, under certain circumstances, vote to reduce or repeal the levy of special taxes in a community facilities district. However, the California Constitution does not allow the reduction or repeal to result in an impairment of contract. The purpose of this Section 2.6(b) is to give notice that: (i) the DDA (including this Financing Plan) is a contract between Authority and Developer; (ii) the financing of the Qualified Project Costs and the Additional Community Facilities through the application of CFD Bond proceeds (which are secured by Project Special Taxes) and Remainder Taxes (as described in Section 2.3(i) and Section 2.7) is an essential part of the consideration for the contract; (iii) the financing of Ongoing Park Maintenance through the application of Remainder Taxes is an essential part of the consideration for the contract; and (iv) any reduction in Authority's ability to levy and collect Project Special Taxes would materially impair Developer's and Authority's contract. To further preserve the contract discussed above, Authority agrees that: (y) until all First Tranche CFD Bonds have been repaid in full or defeased before maturity for any reason other than a refunding, it will not initiate or conduct proceedings under the CFD Act to reduce the Project Special Tax rates without Developer's written consent or if legally compelled to do so (e.g., by a final order of a court of competent jurisdiction); and (z) if the voters adopt an initiative ordinance under section 3 of article XIIC of the California Constitution that purports to reduce, repeal, or otherwise alter the Project Special Tax rates before all First Tranche CFD Bonds have been repaid in full or defeased before maturity for any reason other than a refunding, Authority will meet and confer with Developer to consider commencing and pursuing reasonable legal action to preserve Authority's ability to comply with this Financing Plan.

(c) Covenant to Foreclose. Authority will covenant with CFD bondholders to foreclose the lien of delinquent Project Special Taxes consistent with the general practice for community facilities districts in California and otherwise as



determined by Authority in consultation with its underwriter or financial advisor for the CFD indebtedness and other consultants, subject to applicable laws.

(d) Reserve Fund Earnings. The Indenture for each issue of First Tranche CFD Bonds will provide that earnings on any reserve fund that are not then needed to replenish the reserve fund to the reserve requirement will be transferred to: (i) the CFD Bonds Project Account for allowed uses until it is closed in accordance with the Indenture; then (ii) the debt service fund held by the Fiscal Agent under the Indenture.

(e) Authorization of Reimbursements. Authority will take all actions necessary to satisfy section 53314.9 of the Government Code or any similar statute subsequently enacted to use First Tranche CFD Bond proceeds and Remainder Taxes to reimburse Developer for: (i) CFD formation and First Tranche CFD Bond issuance deposits; and (ii) advance funding of Qualified Project Costs.

(f) Material Changes to the CFD Act. If material changes to the CFD Act after the Reference Date make CFD Bonds or Remainder Taxes unavailable or severely impair their use as a source for financing the Qualified Project Costs or Additional Community Facilities, Authority and Developer will negotiate in good faith as to a substitute public financing program equivalent in nature and function to CFDs.

(g) Private Placement of CFD Bonds. Subject to Authority Board Approval and Sections 4.4 and 4.5 (other than Section 4.5(b)), upon Developer's written request, Authority shall issue CFD Bonds in a private placement to a small number of investors (which may include Developer and its Affiliates). In connection with any such private placement, Authority and the investors may agree upon terms regarding the security of such CFD Bonds other than as required by this Agreement, including, but not limited to, the 3:1 value-to-lien ratio of Section 2.4(c); provided, however, any CFD Bonds must have a debt service coverage-ratio of one hundred ten percent (110%) unless Authority consents to a lower amount. Subject to Authority Board Approval and the CFD Goals, if the CFD Bonds are sold to Developer or its Affiliates, and if the CFD Bonds are not subject to transfer, credit enhancement may not be required.

## **2.7 Ongoing Park Maintenance.**

(a) Maintenance Budget. Not later than August 1 of each year following the Maintenance Commencement Date, Authority shall prepare a preliminary budget of the Estimated Maintenance Costs for the immediately succeeding Maintenance Period. The Estimated Maintenance Costs shall be determined by (i) estimating the costs of the Ongoing Park Maintenance to be incurred during the immediately succeeding Maintenance Period and (ii) subtracting any funds on deposit in the Ongoing Maintenance Account that are not committed to the payment of Ongoing Park Maintenance during the current Maintenance Period.

(b) Delivery of Maintenance Budget. Upon completion by Authority, the preliminary budget will promptly be delivered to Developer for review. Developer shall have fifteen (15) days to review and comment on the preliminary budget. Authority will duly evaluate and implement the reasonable suggestions made by Developer, and Authority shall distribute a final version of the budget to Developer (as finalized, the "Maintenance Budget"). The Maintenance Budget must be completed by no later than September 1 in any given year.

(c) Developer Maintenance Payment. Authority shall annually calculate the Developer Maintenance Payment immediately following the date that Remainder Taxes, if any, are transferred to the Remainder Taxes Project Accounts pursuant to Section 2.3(i), but before any funds in the Remainder Taxes Project Accounts are transferred to the Ongoing Maintenance Account. If, on the date of calculation, the amount on deposit in the Remainder Taxes Project Accounts for all CFDs equals or exceeds the Estimated Maintenance Costs set forth in the applicable Maintenance Budget, then the Developer Maintenance Payment for such Maintenance Period shall be \$0. If, on the date of calculation, the amount of the Estimated Maintenance Costs set forth in the applicable Maintenance Budget exceeds the amount on deposit in the Remainder Taxes Project Accounts for all CFDs, then Authority may request in writing that Developer make a Developer Maintenance Payment in an amount equal to the lesser of:

(i) the difference between the Estimated Maintenance Costs set forth in such Maintenance Budget and the Remainder Taxes on deposit in the Remainder Taxes Project Accounts for all CFDs on such date of calculation; and

(ii) the Maximum Annual Developer Contribution (as defined in Section 2.7(d) below).

(d) Maximum Annual Developer Contribution. On any date of calculation, the Developer Maintenance Payment shall not exceed the lesser of ("Maximum Annual Developer Contribution"):

(i) (A) for the first five years in which Maintenance Budgets are prepared following the Maintenance Commencement Date, the greater of (1) \$1,500,000 or (2) \$1,500,000 plus the portion of the Maximum Annual Developer Contribution for each previous year, if any, that was not paid to Authority; and (B) for each year after the first five years in which Maintenance Budgets are prepared following the Maintenance Commencement Date, the greater of (1) \$3,000,000, or (2) \$3,000,000 plus the portion of the Maximum Annual Developer Contribution for each previous year, if any, that was not paid to Authority; or

(ii) the Total Developer Contribution Balance.

(e) Time of Payment. Developer shall make the Developer Maintenance Payment by the later of (i) September 30 in the year in which the written

request is made by Authority or (ii) fifteen (15) days following receipt of the written request from Authority.

## **2.8 CFD Limitations.**

(a) Authority and Developer agree that each CFD will be formed so that the proceeds of CFD Bonds and Remainder Taxes may be applied to accomplish the following goals in the manner set forth in this Financing Plan: (i) to finance Qualified Project Costs; (ii) to finance Additional Community Facilities; and (iii) to finance Ongoing Park Maintenance. To accomplish these goals, and subject to the limitations set forth in this Section 2.8, and in light of the 2% Limitation and the CFD Goals:

(i) each CFD will be authorized to finance the Qualified Project Costs, the Additional Community Facilities, and the Ongoing Park Maintenance;

(ii) for each CFD, the term for levying Project Special Taxes will be established at no less than 100 years from the first issuance of CFD Bonds in such CFD; and

(iii) for each CFD, the amount of authorized bonded indebtedness will be established to allow the issuance of the First Tranche CFD Bonds to finance Qualified Project Costs and the Second Tranche CFD Bonds to finance Additional Community Facilities.

(b) The CFD Conversion Date shall be calculated separately for each CFD.

(c) Until the CFD Conversion Date, in a CFD, CFD Bonds will be issued exclusively to finance Qualified Project Costs unless Developer, in its sole discretion, consents in writing to the issuance of CFD Bonds for such CFD to finance Additional Community Facilities. After the CFD Conversion Date in such CFD, Authority may issue CFD Bonds to finance Additional Community Facilities or for any other purpose authorized under the CFD Act.

(d) Authority and the Developer agree that, within a CFD, Authority shall not be obligated to issue First Tranche CFD Bonds (including refunding bonds) with a final maturity of later than the date that is forty-two (42) years after the issuance of the first series of First Tranche CFD Bonds in such CFD without the Approval of Authority Board in its sole discretion. Unless Authority and Developer agree otherwise, any CFD Bonds issued to refund First Tranche CFD Bonds shall comply with applicable provisions of the CFD Act pursuant to which refunding bonds will not result in a reduction of the total authorized amount of the bonded indebtedness of a CFD and, in any event, the final maturity date of the refunding bonds shall not exceed the latest maturity date of the First Tranche CFD Bonds being refunded. The previous sentence shall not prevent the issuance of a series of First Tranche CFD Bonds for new money and refunding purposes, so long as the portion of the First Tranche CFD

Bonds attributable to the refunding purpose meets the requirements of the previous sentence.

(e) The Authority intends to include open space improvements, transportation facilities, renewable energy and other sustainability projects, and other public infrastructure within the authorized list of Additional Community Facilities for each CFD. In addition, Additional Community Facilities to be authorized within each CFD shall include, but are not limited to, future improvements necessary to ensure that the shoreline, public facilities, and public access improvements will be protected should sea level rise at the perimeter of the Redevelopment Plan Area as set forth in the Infrastructure Plan (the “**Future Sea Level Rise Improvements**”). If required to be constructed or installed pursuant to the appropriate regulating authorities, Authority agrees to finance the Future Sea Level Rise Improvements through the proceeds of the Second Tranche CFD Bonds and any Remainder Taxes that become available to Authority after the CFD Conversion Date pursuant to this Financing Plan, all in the manner required by the appropriate regulating authorities.

(f) Pursuant to the definition contained in Section 7.2, the term “CFD” means an Improvement Area if one has been so designated. Accordingly, wherever the word “CFD” appears in this Section 2.8, it also means Improvement Area (with the result being that the CFD Conversion Date shall be calculated separately for each Improvement Area).

### **3. TAX INCREMENT FINANCING**

#### **3.1 Pledge; Budget; Shortfall.**

(a) Pledge of Net Available Increment. In connection with the DDA, the City and Authority are entering into the Tax Allocation Agreement to facilitate implementation of the indebtedness incurred under this Financing Plan and the irrevocable pledge of Net Available Increment to the repayment of the indebtedness under this Financing Plan, and the City agrees to Authority's indebtedness and irrevocable pledge and use of Net Available Increment as provided in this Financing Plan. Under the DDA, Developer has agreed to develop the Project Site in the manner set forth in the DDA, and under this Financing Plan Authority has agreed to reimburse Developer for Qualified Project Costs incurred in connection with such development in the amounts and in the manner set forth in this Financing Plan. The total amount of the indebtedness incurred by Authority is the Estimated Qualified Project Costs, as amended pursuant to the terms of this Financing Plan. Authority's obligation contained in this Financing Plan is an “indebtedness” of Authority under section 33670(b) of the CCRL that is secured by an irrevocable pledge of Net Available Increment by Authority. Although Authority shall comply with the Bonded Indebtedness Limit in the issuance of Tax Allocation Debt, the Bonded Indebtedness Limit does not limit the amount of the “indebtedness” of Authority under this Financing Plan. Authority represents and warrants that there are no other pledges of Net Available Increment to any other “indebtedness” of Authority under the CCRL except for the subordinate

pledge of Net Available Increment pursuant to the Navy Promissory Note (the "**Subordinate Pledge**").

(b) Authority Budget. Subject to the CCRL, the Funding Goals and Sections 3.2, and 3.3, and based upon the information provided by Developer under this Article 3, Authority agrees to:

(i) budget the expenditure of the expected Net Available Increment only to: (A) pay debt service due in the next Authority Fiscal Year on any applicable Public Financing incurred or to be incurred to pay Qualified Project Costs; and (B) pay or reimburse Developer for Qualified Project Costs;

(ii) budget the expenditure of the expected Housing Increment only to: (A) pay debt service due in the next Authority Fiscal Year on any tax allocation debt issued or to be issued to finance its affordable housing obligations under the Housing Plan; (B) pay costs incurred in meeting its affordable housing obligations under the Housing Plan; and (C) distribute otherwise as provided in Section 3.3(a);

(iii) use its best efforts to obtain the Board of Supervisors' budget approval; and

(iv) apply any Net Available Increment and Housing Increment it receives to the budgeted purposes, subject to the covenants of the applicable Indentures for Tax Allocation Debt and Supplemental Obligation Financing, and the Funding Goals.

(c) Tax Allocation Debt. Developer may submit written requests that Authority issue Tax Allocation Debt for purposes of this Financing Plan, specifying requested issuance dates, amounts, and main financing terms. Following Developer's request, Developer and Authority will meet with Authority's public financing consultants to determine reasonable and appropriate issuance dates, amounts, and principal financing terms and agrees to issue Tax Allocation Debt to the extent that the terms of financing are consistent with the Funding Goals.

(d) Shortfall. Developer agrees to the following measures to avoid shortfalls in projected Net Available Increment for the Project.

(i) If, after Authority issues any Tax Allocation Debt under this Financing Plan that is secured by a pledge of Net Available Increment, Developer initiates a proceeding under the California Revenue & Taxation Code (a "**Reassessment**") to reassess the value of the parcels then owned by Developer in the Redevelopment Plan Area for which Tax Allocation Debt was issued (the "**Encumbered Parcels**"), that results in a decrease in ad valorem property taxes levied on the Encumbered Parcels, Developer must pay to Authority in an Authority Fiscal Year the amount equal to: (A) the amount of ad valorem property taxes that would have been levied on the Encumbered Parcels in such Authority Fiscal Year if the Reassessment had not occurred; less (B) the amount of ad valorem property taxes actually levied on the Encumbered Parcels in such Authority Fiscal Year (the difference being the



**"Additional Payments").**

(ii) Developer's obligation to make Additional Payments will begin in the Authority Fiscal Year following the Reassessment and continue until the earlier of: (A) the date that the Tax Allocation Debt outstanding on the date of the Reassessment is repaid in full or defeased before maturity for any reason other than a refunding; or (B) the date that the amount of the Additional Payments is reduced to zero or less due to a subsequent reassessment of the Encumbered Parcels for any reason.

(iii) Developer and Authority intend for this Section 3.1(d) to apply only to Public Financing payable or secured only by Net Available Increment, and not to any other Public Financing issued by Authority or the City. Developer's obligations under this Section 3.1(d) are not for the benefit of any CFD Bonds. Should the Tax Laws change, or the Internal Revenue Service or a court of competent jurisdiction issue a ruling that might cause any tax-exempt Tax Allocation Debt to be deemed taxable due to the requirements under clause (i) or (ii), Authority will release Developer from its obligations under this Section 3.1(d), and this Section 3.1(d) will be deemed severed from this Financing Plan under section 27.19 of the DDA.

(iv) Developer and Authority understand and agree that Authority would not be willing to enter into this Financing Plan without the agreement set forth in this Section 3.1(d).

**3.2 Net Available Increment.**

(a) Pledge of Net Available Increment. Authority irrevocably pledges Net Available Increment for the purposes set forth in this Financing Plan. Authority will take all actions necessary under the Tax Allocation Agreement to ensure that Net Available Increment will be available for purposes of this Financing Plan, including filing an annual Statement of Indebtedness and other actions described in the Tax Allocation Agreement.

(b) Use of Net Available Increment. After paying or setting aside amounts needed for debt service due on Tax Allocation Debt or Supplemental Obligation Financing secured by or payable from Net Available Increment during Authority Fiscal Year Authority will use all Net Available Increment to reimburse Developer's Qualified Project Costs pursuant to this Financing Plan. In addition, upon and as allocated in Developer's written request, Authority will use all or any part of Net Available Increment to:

(i) pay debt service on other Public Financing to the extent it financed Qualified Project Costs;

(ii) refund or defease before maturity a Public Financing that financed Qualified Project Costs;

(iii) pay any Authority Costs due and payable under the DDA, if allowable under the CCRL; or

(iv) apply to any other use allowable under the CCRL or this Financing Plan.

(c) Application During High IRR Period. At any time upon the occurrence and during the continuance of a High IRR Period, Authority may, in its discretion, use Net Available Increment remaining after payment of debt service due on Tax Allocation Debt, Supplemental Obligation Financing and any other Public Financing: (i) for other redevelopment purposes on the Project Site; provided that Authority may only expend Net Available Increment on a pay-as-you-go basis and may not issue any Tax Allocation Bond, bonded indebtedness, or any other obligation that is secured by Net Available Increment during the High IRR Period without the written consent of Developer; or (ii) to reimburse Developer for Qualified Project Costs. Immediately upon the conclusion of a High IRR Period, the Authority shall no longer have any authorization to expend the Net Available Increment in the manner set forth in this Section 3.2(c).

(d) Pledge of Net Available Increment in Event of Default. Pursuant to Authority's Subordinate Pledge, upon the occurrence of and only for the duration of and to the extent of any default in Authority's payment of Initial Navy Consideration under the Conveyance Agreement which is caused by an Event of Default by the Developer under the DDA, Authority shall withhold applying Net Available Increment to Qualified Project Costs and hold such Net Available Increment for the account of the Navy until the Event of Default is cured.

Subject to the previous paragraph, upon the occurrence of and only for the duration of any Material Default under the DDA, Authority shall withhold applying Net Available Increment to Qualified Project Costs and may apply such Net Available Increment to Authority's payment obligations with respect to the Project, including, but not limited to, payment of Initial Navy Consideration and Additional Consideration, construction of Infrastructure if the security provided by Developer is not sufficient for that purpose, payment of the affordable housing subsidy, payment of Authority Costs, and any other financial obligations that otherwise would have been the obligation of Developer.

### **3.3 Housing Increment.**

(a) Use of Housing Increment. Authority agrees to budget and use Housing Increment from the Redevelopment Plan Area in accordance with the CCRL to pay in the following order of priority: (i) Authority's costs of predevelopment, development, and construction of Affordable Housing Units developed or to be developed within the Project Site under the Housing Plan (the "**Authority Affordable Housing Costs**"); and (ii) any other authorized uses of the Low and Moderate Income Housing Fund.

(b) Goal for Housing Increment. Authority and Developer agree that: (i) Authority will use the Housing Increment exclusively to satisfy Authority Affordable Housing Costs for the Redevelopment Plan Area in compliance with section 33334.2 of



the CCRL; and (ii) reimbursing Developer's Qualified Project Costs for Infrastructure benefiting the Affordable Housing Units and other Qualified Project Costs to the extent allowed under the CCRL and Tax Laws.

### **3.4 Budget Procedures.**

(a) Estimate of Net Available Increment. No later than April 1 of each year, Authority staff will meet and confer with Developer with respect to the projected amount of Net Available Increment for the next Authority Fiscal Year for each Major Phase. Authority will provide Developer with: good faith estimates, for the next Authority Fiscal Year, of: (A) Net Available Increment (based, in part, upon information provided by Developer as to any new development and Transfers of property); and (B) the amount of any debt service on Public Financings secured by a pledge of and expected to be paid from Net Available Increment. The April 1 date referred to in this Section 3.4(a) is based on the current budget process of Authority and the City. Developer and Authority will adjust the dates as appropriate if the City and Authority alter their budget process in the future.

(b) Purpose of Pledge. Developer and Authority shall use all Net Available Increment in each Authority Fiscal Year as provided in this Financing Plan, and Authority shall prepare its annual budget to reflect its obligations under this Financing Plan. As long as Authority is discharging fully all of its duties under the DDA and the Tax Allocation Agreement to pledge, obtain, and use all Net Available Increment for Qualified Project Costs (except as provided in Section 3.2(b)), Authority will not be liable to Developer if the Board of Supervisors fails to Approve Authority's budget, or if Net Available Increment Authority actually receives in any Authority Fiscal Year is not sufficient to pay all budgeted costs. Qualified Project Costs that Developer incurs will be eligible for reimbursement from the Funding Sources in each Authority Fiscal Year until reimbursed.

(c) Redevelopment-Wide Indebtedness. Upon written notice from one party to the other, Developer and Authority shall meet and confer about the possibility of cross-collateralization with project areas of the Redevelopment Agency.

## **4. SUPPLEMENTAL OBLIGATION FINANCING, ALTERNATIVE FINANCING, GRANTS AND PUBLIC FINANCING GENERALLY**

**4.1 Supplemental Obligation Financing.** Developer and Authority agree as follows:

(a) Authority has incurred indebtedness to Developer under this Financing Plan for the purposes of carrying out the Redevelopment Plan. The total amount of the indebtedness incurred by Authority is set forth as Estimated Qualified Project Costs. Pursuant to Section 3, Authority has irrevocably pledged Net Available Increment to the payment of its indebtedness to Developer, which is limited to the amounts and in the manner set forth in this Financing Plan.

(b) Developer may from time to time assign Net Available Increment which is not needed to pay debt service on existing Tax Allocation Debt to the payment of debt service on bonds, notes, or other obligations issued by or on behalf of, or special taxes, assessments or amounts levied by or on behalf of, a local agency or special district such as a community facilities district or joint powers authority (the "**Supplemental Obligations**") after the Indebtedness Time Limit under the Redevelopment Plan, so long as the proceeds of the Supplemental Obligations are applied to pay or reimburse for Qualified Project Costs (the "**Supplemental Obligation Financing**"). Notwithstanding the foregoing, to the extent necessary to comply with applicable Tax Laws, Developer shall not to assign the portion, if any, of Net Available Increment that is comprised of Developer's Additional Payments required under Section 3.1(d), if any, to reimburse Developer for payment of special taxes or assessments or to pay debt service on Supplemental Obligations that are also payable from Project Special Taxes.

(c) Developer will execute and deliver to Authority an assignment to the bond trustee for the Supplemental Obligations of Developer's right to receive the Net Available Increment pledged to the Supplemental Obligation under this Financing Plan. The Indenture for the Supplemental Obligations will obligate the Fiscal Agent to use Net Available Increment it receives under Developer's assignment to pay the Supplemental Obligations.

(d) Upon receipt of Developer's assignment of Developer's right to Net Available Increment, Authority shall forward to the applicable bond trustee, on Developer's behalf, Net Available Increment to: (i) pay debt service on the Supplemental Obligations; (ii) pay special taxes, assessments, or payments relating to the Supplemental Obligations; and (iii) pay related administrative expenses. Notwithstanding the foregoing, to the extent necessary to comply with applicable Tax Laws, Developer shall not assign the portion, if any, of Developer's Additional Payments required under Section 3.1(d), if any, to reimburse Developer for payment of special taxes or assessments or to pay debt service on Supplemental Obligations that are also payable from Project Special Taxes.

(e) Authority's obligations under this Section 4.1 with respect to the Net Available Increment will terminate on the applicable Increment Termination Date.

(f) Any assignments by Developer under Section 4.1(b) and Section 4.1(c) are additional methods of leveraging the Net Available Increment that has been pledged to the "indebtedness" created by this Financing Plan and are not new "indebtedness" under the CCRL. The Supplemental Obligations are not bonded indebtedness of Authority under the CCRL.

(g) Following Developer's request for Supplemental Obligation Financing, Developer and Authority will meet with appropriate Authority or City consultants as to the feasibility, amount, and timing of the proposed Supplemental Obligation Financing. Neither the City nor Authority will be required to implement Supplemental Obligation Financing that is not consistent with the Funding Goals.

#### 4.2 Alternative Financing.

(a) Request for Alternative Financing. Authority acknowledges and agrees that other methods of Public Financing for Project Costs may be viable, become available, or become necessary due to a Change in Law that affects the Funding Sources: (i) before Developer's completion of the Infrastructure; or (ii) before Developer's full reimbursement for Project Costs. These other methods may include any municipal debt financing vehicle then available under applicable law, including tax-exempt bonds, taxable bonds, tax-credit bonds, federal or State loans incurred by Authority, the City, or a joint powers authority for application towards Qualified Project Costs and secured by Net Available Increment or Project Special Taxes, or special assessments or fees on Taxable Parcels of commercial property in the Project Site through a community taxing district formed by City ordinance, or an infrastructure financing district pursuant to the Infrastructure Financing District Act (commencing with California Government Code Section 53395) (collectively, "**Alternative Financing**"). Therefore, from time to time, so long as Developer's Project Costs have not been fully paid or reimbursed, Developer may submit a written request for Alternative Financing, describing:

- (i) the Project Costs to be financed with the proceeds of the Alternative Financing;
- (ii) if the Project Costs relate to construction, the Completion date or estimated Completion date for the related Infrastructure;
- (iii) if the Project Costs relate to construction, the then current construction schedule for any other improvements to be made by Developer; and
- (iv) the Alternative Financing.

(b) Implementation. Following Developer's request for Alternative Financing, Developer and Authority will meet with appropriate Authority or City consultants as to the necessity, feasibility, amount, and timing of the proposed Alternative Financing. Neither the City nor Authority will be required to implement Alternative Financing that: (i) is not consistent with the Funding Goals or (ii) proposes to tax or assess Exempt Parcels.

(c) Financing.

(i) If an Alternative Financing contemplates the formation of a CFD and the pledge of Project Special Taxes, Developer may petition Authority or City, as applicable, to form one or more CFDs over the Project Site in the manner and subject to parameters and limitations that differ from CFDs formed pursuant to Section 2 so long as Developer agrees to such terms in writing. Any such Alternative Financing CFDs may overlap all or any of the CFDs formed pursuant to Section 2.

(ii) If an Alternative Financing contemplates the pledge of Net Available Increment, Developer and Authority may mutually agree to adjust the

application of Net Available Increment to accomplish the Alternative Financing.

#### **4.3 Grants.**

(a) Cooperation. Authority and Developer will work together to seek appropriate Project Grants for the Project.

(b) Authority Project Grants. Subject to the conditions in Project Grant documents and applicable law, Authority will use Project Grants it procures in the following order of priority: (i) first, to finance Project Costs that are not Qualified Project Costs; (ii) second, to finance the Qualified Project Costs incurred in connection with the Parks and Open Space Plan; (iii) third, to finance the costs of purchasing ferry boats for use on the Project Site; and (iv) fourth, to finance any other Qualified Project Costs. Authority will be entitled to retain an amount equal to one-half of the amount of Project Grant funds Authority applied to Project Costs from the proceeds of the next available issuance of Tax Allocation Debt.

(c) Developer Project Grants. Subject to the conditions in Project Grant documents and applicable law, Developer will use Project Grants it procures to finance Project Costs.

#### **4.4 Provisions Applicable To All Public Financings.**

(a) Acquisition and Reimbursement Agreement. Developer and Authority will execute the Acquisition and Reimbursement Agreement (with only such changes as may be Approved by Developer and Authority Director in their respective sole discretion) before the earlier of: (i) the date the first Developer Construction Obligation is Commenced; or (ii) the date of the first Sub-Phase Approval. The Acquisition and Reimbursement Agreement describes the procedures by which: (x) Developer will seek reimbursement of Qualified Project Costs and Authorized Payments; (y) Authority will inspect and accept Infrastructure and other Improvements that Developer is required to construct under the DDA; and (z) Authority will approve Developer's Payment Requests. Authority will reimburse Developer for Qualified Project Costs and Authorized Payments with any combination of Funding Sources then available for Authority's use, subject to any priority established in the Acquisition and Reimbursement Agreement. Authority will acquire the Infrastructure and other Improvements from Developer in accordance with, and subject to the limitations set forth in, the Acquisition and Reimbursement Agreement and applicable Supplements. Developer acknowledges that it must satisfy the conditions set forth in the Acquisition and Reimbursement Agreement as a condition to receiving reimbursement for any Authorized Payments or Qualified Project Costs.

(b) Financing Temporarily Excused. Authority will not be obligated to issue any Public Financing (or provide Project Grant proceeds if clause (i), (ii), or (iii) applies), and neither Authority nor the City will be obligated to issue any Alternative Financing, to finance Qualified Project Costs during the time in which:

(i) Developer is in default in the payment of any ad valorem tax or Project Special Taxes levied on any Taxable Parcel it then owns in the Project Site;

(ii) Developer is in Material Breach under the DDA;

(iii) Developer fails to cooperate reasonably with Authority or the City as necessary to implement Public Financing consistent with this Financing Plan;

(iv) in the judgment of Authority or the City, as applicable, after consultation with Developer, and based upon the Funding Goals and advice of Authority or City staff and consultants, market conditions or conditions affecting the property in the Project Site (such as tax delinquencies, assessment appeals, damage or destruction of improvements, or litigation) make it fiscally imprudent or infeasible to incur the requested indebtedness at the time; or

(v) the First Tranche CFD Bond or Tax Allocation Debt underwriter (the "**Underwriter**") for any bond issue exercises any right to cancel its obligation to purchase the First Tranche CFD Bonds or Tax Allocation Debt during the occurrence and continuation of events specified in its bond purchase agreement with Authority ("**Underwriter Force Majeure**").

(c) Developer Financing Costs. Developer will not be entitled to reimbursements from any Public Financing for its financing costs (consisting of interest carry and lender fees) for any Infrastructure construction financing:

(i) to the extent that the costs are commercially unreasonable as of the date that the payment obligation was incurred;

(ii) while Developer is in default in the payment of any ad valorem taxes or Project Special Taxes levied on any of the Taxable Parcels it then owns or while Developer is in Material Breach under the DDA; or

(iii) if the costs arise more than ninety (90) days after the later to occur of: (A) the date on which Authority has found the related Infrastructure to be Complete under the Acquisition and Reimbursement Agreement; and (B) Developer has been reimbursed fully for the related Qualified Project Costs from Funding Sources.

(d) Continuing Disclosure. Developer must comply with all of its obligations under any continuing disclosure agreement it executes in connection with the offering and sale of any Public Financing. Developer acknowledges that a condition to the issuance of any Public Financing may be Developer's execution of a continuing disclosure agreement.

(e) Qualified Pre-Development Costs. To the extent required, (i) each CFD will be authorized at formation to finance the Qualified Pre-Development Costs and (ii) the payment of the Qualified Pre-Development Costs will be budgeted in the same manner as Qualified Project Costs in Section 3.1.



#### **4.5 Terms of the Public Financings.**

(a) Meet and Confer. Authority staff and consultants will meet and confer with Developer before the sale of any Public Financing to discuss the terms of any proposed debt issue, but Authority will determine the final terms in its reasonable discretion in light of the Funding Goals and subject to this Financing Plan. Authority will not enter into any Indenture for any form of Public Financing that is not bonded indebtedness, if the indebtedness must be secured by or repaid with Net Available Increment or Project Special Taxes without Developer's express written consent, which may be granted or withheld based on all relevant factors, including the timing and availability of funds, credit enhancement requirements, applicable interest rate and other repayment terms, and other conditions to the proposed indebtedness.

(b) Credit Enhancement. Any Developer credit enhancements for Public Financing must be without recourse to the City's General Fund or Authority's general funds or other assets (other than Net Available Increment to the extent pledged to the payment of Public Financing obligations). Any financial institution issuing a credit enhancement must have a rating of at least "A" from Moody's Investor's Service Inc. or Standard & Poor's Rating Service, or the equivalent rating from any successor rating agency mutually acceptable to Developer and Authority, on the date of issuance and at any later credit renewal date. Developer must provide substitute credit enhancements for any credit enhancement that does not meet this rating standard on a credit renewal date. If the fees (and replenishment of any draw or other use of the collateral for the obligation it secures) for any Developer credit enhancements will be reimbursable from funds other than Developer funds, they may be reimbursed from Project Special Taxes or Net Available Increment, as applicable, on a basis subordinate to any debt service and other annual costs for any related outstanding Public Financing.

(c) Tax-Exempt or Taxable. Developer and Authority shall cooperate to maximize the tax-exempt treatment of any Public Financing, but Developer and Authority may agree to issue taxable Public Financings.

(d) No Other Land-Secured Financings. Other than the CFDs, Authority shall not to form any additional land-secured financing district over any portion of the property in the Project Site without Developer's Approval in its sole discretion.

#### **4.6 Reimbursements for Qualified Project Costs.**

(a) Limited Reimbursement. Developer and Authority acknowledge that:

(i) Developer is agreeing to pay for the Project Costs with the expectation that Developer will be reimbursed to the extent and in the manner set forth in this Financing Plan and the Acquisition and Reimbursement Agreement, subject to applicable laws and any financing instruments;

(ii) Developer may be required to begin paying Project Costs before Funding Sources to reimburse Developer are available;

(iii) Developer will be reimbursed for Qualified Project Costs and paid Authorized Payments in any number of installments as Funding Sources become available in accordance with this Financing Plan and the Acquisition and Reimbursement Agreement, with any unpaid balance deferred as long as necessary (subject to applicable Increment Termination Dates and other limitations on Funding Sources under applicable laws and financing instruments), until Funding Sources become available;

(iv) Developer's payment of Project Costs before the availability of Funding Sources to reimburse Qualified Project Costs is not a dedication or gift, or a waiver of Developer's right to reimbursement for Qualified Project Costs under this Financing Plan; and

(v) Funding Sources may not be sufficient to pay all of Developer's Qualified Project Costs and Authorized Payments.

(b) Acquisition of Infrastructure. Developer and Authority acknowledge that:

(i) Developer may be constructing Infrastructure before Funding Sources that will be used to acquire it are available;

(ii) The Department of Public Works will inspect Infrastructure and other Improvements and process Payment Requests even if Funding Sources for the amount of pending Payment Requests are not then sufficient to satisfy them in full;

(iii) Infrastructure may be conveyed to and accepted by the City before the applicable Payment Requests are paid in full;

(iv) If the City accepts Infrastructure before the applicable Payment Requests are paid in full, the unpaid balance will be paid when sufficient Funding Sources become available, and the Acquisition and Reimbursement Agreement will provide that the applicable Payment Requests for Infrastructure accepted by the City may be paid: (A) in any number of installments as Funding Sources become available; and (B) irrespective of the length of time payment is deferred; and

(v) Developer's conveyance or dedication of Infrastructure to the City or other public agency before the availability of Funding Sources to acquire the Infrastructure is not a dedication or gift, or a waiver of Developer's right to payment of Qualified Project Costs under this Financing Plan.



## 5. POLICE, FIRE STATION AND PUBLIC PARKING FINANCING

5.1 Request for Financing From City. In any circumstance agreed to by Authority and Developer, Authority will ask the City to provide initial financing for certain Infrastructure, including but not limited to the fire and police station and the public parking garages, with certificates of participation or lease revenue bonds, with the related lease payments to be reimbursed and paid from Funding Sources when available and the certificates of participation or lease revenue bonds to be refinanced with a Public Financing when feasible. Developer and Authority acknowledge that the City shall have no obligation to provide any such certificate of participation or lease revenue bond financing.

## 6. INTERIM LEASE REVENUES

### 6.1 Distribution of Interim Lease Revenues.

(a) Distributions of Interim Lease Revenues. Interim Lease Revenues shall be collected by Authority, and, within thirty (30) days of receipt, distributed according to the following priorities:

(i) Authority will use the Interim Lease Revenue to pay Authority Costs that the Authority has incurred and that have not been previously reimbursed; then

(ii) Authority will apply any remaining Interim Lease Revenues to any Installment Payment then due and unpaid; then

(iii) the Authority will transfer to Developer any remaining Interim Lease Revenues (the "**Net Interim Lease Revenues**"), and Developer will treat such Net Interim Lease Revenues as Gross Revenues; provided, however, that Developer shall only use the Net Interim Lease Revenues for Project Costs.

(b) Default and Navy. All distributions to Developer of Net Interim Lease Revenues under clause (a)(iii) shall be withheld for the benefit of the Navy upon the occurrence of and for the duration of any default in the payment of Initial Navy Consideration under the Conveyance Agreement.

(c) Material Default and Authority. Subject to the previous paragraph, all distributions of Net Interim Lease Revenues to Developer under clause (a)(iii) shall be withheld for the benefit of the Authority upon the occurrence of and for the duration of any Material Default under the DDA and may be applied by the Authority to any of its payment obligations with respect to the Project, including, but not limited to, payment of Initial Navy Consideration and Additional Consideration, construction of Infrastructure if the security provided by Developer is not sufficient for that purpose, payment of the affordable housing subsidy, payment of Authority Costs, and any other financial obligations that otherwise would have been the obligation of Developer.

## 7. INTERPRETATION; DEFINITIONS

### 7.1 Interpretation of Agreement.

(a) DDA. This Financing Plan is a part of the DDA and is subject to all of its general terms, including the rules of interpretation.

(b) Inconsistent Provisions. Developer and Authority intend for this Financing Plan to prevail over any inconsistent provisions relating to the financing structure for the Project and their respective financing-related obligations in any other document related to the Project.

7.2 Defined Terms. The following terms have the meanings given to them below or are defined where indicated.

**"Accrued Interest"** means interest accrued at 3.0% per annum on the Unpaid Balance, commencing on the Maintenance Commencement Date and continuing until the Developer Contribution is paid to the Authority in full.

**"Accounting"** means a complete accounting and computations setting forth the basis of each Additional Consideration to be paid, including the Gross Revenues and Development Costs for the relevant determination period, together with a narrative description of the methodology employed to calculate each Additional Consideration payment to be due for the relevant period.

**"Acquisition and Reimbursement Agreement"** means the agreement between Developer and Authority governing the terms of Authority's acquisition of Infrastructure and reimbursement of Qualified Project Costs, in the form attached to this Financing Plan as Exhibit H-A, as the same may be modified or amended from time to time.

**"Additional Community Facilities"** means any public facilities that may be financed by Authority with Second Tranche CFD Bonds and Remainder Taxes under applicable law and in the manner set forth in this Financing Plan, and shall include but not be limited to the Future Sea Level Rise Improvements.

**"Additional Consideration"** means the First Tier Payments and the Second Tier Payments.

**"Additional Payments"** is defined in Section 3.1(d)(i).

**"Adequate Security"** is defined in the DDA.

**"Affiliate"** is defined in the DDA.

**"Affordable Housing Units"** is defined in the Housing Plan.

**"Alternative Financing"** is defined in Section 4.2(a).

**"Annual Report"** is defined in Section 1.6(a).

**"Approval"** and any variation thereof (such as **"Approved"** or **"Approve"**) is defined in the DDA.

**"Assigned Project Special Tax Rate"** is defined in Section 2.3(d).

**"Authority"** means the Treasure Island Development Authority.

**"Authority Affordable Housing Costs"** is defined in Section 3.3(a).

**"Authority Board"** is defined in the DDA.

**"Authority Consideration"** means, collectively, the Authority Second Tier Payments and the Authority Third Tier Payments.

**"Authority Costs"** is defined in the DDA.

**"Authority Director"** is defined in the DDA.

**"Authority Fiscal Year"** means the period commencing on July 1 of any year and ending on the following June 30.

**"Authority Second Tier Payment"** is defined in Section 1.3(c)(iii).

**"Authority Third Tier Payment"** is defined in Section 1.3(c)(iv).

**"Authorized Payments"** is defined in the Acquisition and Reimbursement Agreement.

**"Backup Project Special Tax Rate"** is defined in Section 2.3(g).

**"Board of Supervisors"** is defined in the DDA.

**"Bonded Indebtedness Limit"** means the dollar limit, if any, on the amount of bonded indebtedness that can be outstanding at any time that is specified in the Redevelopment Plan under the CCRL.

**"Building"** means any structure to be constructed within a CFD, including structures that contain Taxable Residential Units, commercial, industrial, science and technology, research and development, and office uses.

**"Cash Flow Distribution Termination Date"** means the date on which there are no longer any Gross Revenues generated by the Project.

**"CCRL"** is defined in the DDA.

**"Certificate of Completion"** is defined in the DDA.

**"CFD"** means (i) a community facilities district formed over all or any part of the Project Site that is established under the CFD Act to finance Qualified Project Costs and Additional Community Facilities, or (ii) if designated, an Improvement Area within a community facilities district formed over all or any part of the Project Site, which Improvement Area has been designated under the CFD Act to finance Qualified Project Costs and Additional Community Facilities.

**"CFD Act"** means the Mello-Roos Community Facilities Act of 1982 (Gov't Code § 53311 et seq.), as amended from time to time.

**"CFD Bonds"** means one or more series of bonds (including refunding bonds) secured by the levy of Project Special Taxes in a CFD.

**"CFD Bonds Project Account"** means the funds or accounts, however denominated, held by the Fiscal Agent under an Indenture containing the Net CFD Proceeds to be used to finance Qualified Project Costs and, when authorized pursuant to Section 2.8, Additional Community Facilities.

**"CFD Conversion Date"** means, calculated separately for each CFD, the earliest to occur of (i) the date that all Qualified Project Costs have been paid or reimbursed to Developer for the Project as a whole, or (ii) the date that is forty-two (42) years after the issuance of the first series of First Tranche CFD Bonds in such CFD.

**"CFD Goals"** means Authority's Local Goals and Policies for Community Facilities Districts, approved by Resolution No. \_\_\_\_\_, adopted on \_\_\_\_, 2010, and as thereafter amended from time to time solely to the extent required under the CFD Act or other controlling State or federal law or, with respect to CFDs formed pursuant to this Financing Plan, as otherwise Approved by Developer in its sole discretion.

**"CFD Project Account"** means the funds or accounts, however denominated, held by the Fiscal Agent under an Indenture in which Remainder Taxes are deposited pursuant to Section 2.3(j) to be used to finance Qualified Project Costs and, when authorized pursuant to Section 2.8, Additional Community Facilities.

**"Change In Law"** means legislation enacted by the Congress of the United States, by the legislature of the State or the enactment of a regulation or statute by any Governmental Entity (other than a City Party) with jurisdiction over Authority.

**"Change Proceedings"** means proceedings under section 53332 of the CFD Act initiated by Developer's petition.

**"City"** is defined in the DDA.

**"City's General Fund"** means the City's general operating fund, into which taxes are deposited, excluding dedicated revenue sources for certain municipal services, capital projects, and debt service.

**"Commence"** is defined in the DDA.

**"Complete"** (or its variant "Completion") is defined in the DDA.

**"Conveyance Agreement"** is defined in the DDA.

**"CPA"** means an independent certified public accounting firm Approved by Authority and Developer.

**"Cumulative Developer Maintenance Contributions"** means the cumulative total of all Developer Maintenance Payments made by the Developer to the Authority prior to the date of calculation.

**"DDA"** means that certain Disposition and Development Agreement (Treasure Island/Yerba Buena Island) to which this Financing Plan is attached.

**"Default Interest Rate"** means an interest rate of three hundred (300) basis points above the Interest Rate.

**"Department of Public Works"** is defined in the DDA.

**"Developer Maintenance Payment"** means the payment made by Developer to pay for Ongoing Park Maintenance, subject to the limitations set forth in Section 2.7(d).

**"Development Costs"** means all Hard Costs, Soft Costs, and Pre-Development Costs, except to the extent specifically excluded under the Conveyance Agreement and specifically excluding any costs, fees or charges related to debt financing that are not also Permissible Financing Costs.

**"Developed Property"** means, in any Authority Fiscal Year, an assessor's parcel of taxable property included in a recorded final subdivision map before January 1 of the preceding Authority Fiscal Year, and for which a building permit has been issued before May 1 of the preceding Authority Fiscal Year.

**"Developer"** is defined in the DDA.

**"Developer Construction Obligations"** means, to the extent required under the DDA in connection with the Project, Developer's obligation to construct or cause the construction of the Project in accordance with the Schedule of Performance, including: (a) the Infrastructure; and (b) Improvements pursuant to the Parks and Open Space Plan.

**"Developer Contribution"** means the amount of \$15,650,000.

**"Developer Fiscal Quarter"** is defined in the DDA.

**"Developer Fiscal Year"** is defined in the DDA.

**"Encumbered Parcels"** is defined in Section 3.1(d)(i).

**"Estimated Maintenance Cost"** means the estimated costs of the Ongoing Park Maintenance for a Maintenance Period, as determined pursuant to Section 2.7(a).

**"Estimated Qualified Project Costs"** means One Billion Two Hundred Sixty Million Dollars (\$1,260,000,000).

**"Event of Default"** is defined in the DDA.

**"Excess Land Appreciation Structure"** is defined in the Conveyance Agreement.

**"Exempt Parcel"** means the Public Property. Exempt Parcel does not include an assessor's parcel that, immediately prior to the acquisition by Authority or other Governmental Entity, was a Taxable Parcel that Authority or any other Governmental Entity acquires by gift, devise, negotiated transaction, or foreclosure (including by way of credit bidding), or an assessor's parcel that, immediately prior to the acquisition by Authority, was a Taxable Parcel that Authority acquires under its right of reverter under the DDA.

**"Final Conveyance Agreement IRR"** is defined in Section 1.3(e)(i).

**"Final Conveyance Agreement IRR Statement"** is defined in Section 1.3(e)(i).

**"Final IRR"** is defined in Section 1.3(f).

**"Final IRR Statement"** is defined in Section 1.3(f).

**"Financing Plan"** is defined in the DDA.

**"First Tier Payment"** is defined in Section 1.3(a)

**"First Tranche"** means, calculated separately for each CFD, one or more series of CFD Bonds (including refunding bonds) secured by the levy of Project Special Taxes in such CFD, the proceeds of which Authority is obligated under this Financing Plan to use to finance Qualified Project Costs.

**"Fiscal Agent"** means the fiscal agent or trustee under an Indenture.

**"Funding Goals"** is defined in Section 1.1(a).



**"Funding Sources"** is defined in Section 1.2(a)(i).

**"Future Sea Level Rise Improvements"** is defined in Section 2.8(f).

**"GAAP"** means generally accepted accounting principals.

**"Governmental Entity"** is defined in the DDA.

**"Gross Revenues"** means, for any period, all cash revenues received by the Developer from any source whatsoever, and whether collected through or outside of escrow in connection with all or any part of the Project, in each case for such period, which shall include, the gross proceeds of sale or transfer of the Lots or any portion thereof, rents or other payments paid to Developer as the master landlord under any ground lease or as a property manager under an interim management agreement with the Authority for existing facilities and open space, including any of the Authority's revenues assigned to the Developer pursuant to the DDA (which assignment may exclude revenues of the Authority that are used to pay for the Authority's costs and expenses that are not included in the Authority Cost Payment pursuant to the DDA); proceeds from the first sale of ground leases or refinancing intended to capitalize ground value; any damage recoveries, insurance payments or condemnation proceeds payable to the Developer with respect to the Project to the extent not otherwise used for repair or reconstruction of the Property, all revenues derived from agreements to which the Developer is a party pursuant to which the Developer participates in the proceeds of the operation or sale of any portion of the Property sold to a Vertical Builder, the proceeds of and proceeds from any assessment or special tax districts formed for purposes of providing funds for costs associated with the Project, and amounts paid to Developer from tax increment financing or other public financing, and grants and tax credits to reimburse Developer for infrastructure or other qualifying costs. Gross Revenues shall specifically exclude the proceeds of any capital contributed to the Developer by its partners or members or the proceeds of any loan made to the Developer. Subject to Section 6.1(a)(iii), Gross Revenues includes Net Interim Lease Revenues.

**"High IRR Period"** means the time period (i) commencing on the date that an IRR Statement shows that Developer has achieved a cumulative IRR in excess of 25% as of the end of the final Quarter of the applicable Reporting Period considering all First Tier Payments, Second Tier Payments and Authority Second Tier Payments and (ii) ending on the date that a subsequent IRR Statement shows that Developer's cumulative IRR as of the end of the final Quarter of the applicable Reporting Period, considering all First Tier Payments, Second Tier Payments and Authority Second Tier Payments, is 25% or below.

**"Housing Increment"** means the portion of Increment required to be deposited into the Low and Moderate Income Housing Fund pursuant to section 33334.2 of the CCRL and to be used to increase, improve, and preserve the City's supply of housing



for persons and families of very low-, low-, or moderate-income under section 33334.2 of the CCRL.

**"Housing Plan"** is defined in the DDA.

**"Improvement Area"** means an improvement area within a community facilities district designated pursuant to section 53350 of the CFD Act.

**"Improvements"** is defined in the DDA.

**"Inclusionary Unit"** is defined in the Housing Plan.

**"Increment"** means tax increment revenues arising from the Redevelopment Plan Area and allocated to Authority under section 33670(b) of the CCRL, including all interest earnings.

**"Increment Termination Date"** means the time limits in the Redevelopment Plan on Authority's authority to repay indebtedness with property tax increment under CCRL.

**"Indebtedness Time Limit"** means the time limits in the Redevelopment Plan on establishing indebtedness under the CCRL, excluding any extensions for the purpose of financing affordable housing.

**"Indenture"** means one or more indentures, trust agreements, fiscal agent agreements, financing agreements, or other documents containing the terms of any indebtedness that is secured by a pledge of and to be paid from Net Available Increment or Project Special Taxes.

**"Infrastructure"** is defined in the DDA.

**"Infrastructure Plan"** is defined in the DDA.

**"Initial Closing"** means the date on which the first conveyance of the FOST Parcel by Quitclaim Deed from the Navy to the Authority occurs in accordance with Article 3 of the Conveyance Agreement.

**"Initial Consideration Term"** means a term of ten (10) years (as such term may be extended pursuant to Section 4.2.2 of the Conveyance Agreement).

**"Initial Navy Consideration"** means the initial consideration to the Navy for acquisition of the Project Site, including the principal amount of \$55 million and all interest payable to the Navy on the unpaid principal amount.

**"Initial Major Phase"** is defined in the DDA.

**"Installment Payment"** is defined in the Conveyance Agreement.

**"Interest Rate"** means an annual interest rate of \_\_\_\_\_%, which equals the interest rate payable on ten year (10) Treasury Notes in effect as of the month that the Conveyance Agreement is entered into plus one hundred fifty basis points (150 bps), which Interest Rate will be locked for the duration of the Conveyance Agreement

**"Interim Leases"** means leases under which Authority is the lessor encumbering land in the Project Site during the time such land is leased to or owned by Authority.

**"Interim Lease Revenues"** means all cash, notes, or other monetary consideration of any kind paid to the Authority under the Interim Leases.

**"IRR"** means the internal rate of return, annualized, calculated on the Project's Net Cash Flow by the Excel 2007 "IRR" function using quarterly Net Cash Flows. The Project's Net Cash Flow shall be adjusted to show all costs incurred in the quarter paid and all revenues in the quarter received, provided that Pre-Development Costs are applied as of the Initial Closing. An example of the IRR calculation is attached to the Conveyance Agreement as Exhibit DD.

**"IRR Statement"** is defined in Section 1.3(b).

**"Lot"** is defined in the DDA.

**"Low and Moderate Income Housing Fund"** is defined in the Housing Plan.

**"Maintenance Budget"** is defined in Section 2.7(b).

**"Maintenance Commencement Date"** means the date that the first park owned by the Authority is completed and open to the public.

**"Maintenance Period"** means, in each year, the one-year period commencing October 1 and ending on September 30.

**"Major Phase"** is defined in the DDA.

**"Major Phase Approval"** is defined in the DDA.

**"Market Rate Unit"** is defined in the Housing Plan.

**"Material Breach"** is defined in the DDA.

**"Maximum Annual Developer Contribution"** is defined in Section 2.7(d).

**"Maximum Project Special Tax Rate"** is defined in Section 2.3(g).

**"Navy"** is defined in the DDA.

**"Net Available Increment"** means all Increment, excluding: (a) Housing Increment and (b) payments to taxing agencies required under the CCRL.

**"Net Cash Flow"** means Gross Revenues received by the Developer from the Project less Development Costs paid by the Developer.

**"Net CFD Proceeds"** means the proceeds of CFD Bonds that are available or used to pay for Qualified Project Costs directly or by reimbursements to Developer and, when authorized pursuant to Section 2.8, to pay for the costs of Additional Community Facilities.

**"Net Interim Lease Revenues"** is defined in Section 6.1.

**"Official Records"** is defined in the DDA.

**"Ongoing Maintenance Account"** means a separate account created by Authority and maintained by Authority to hold all Remainder Taxes deposited therein pursuant to Section 2.3(i)(i)(A) or Section 2.3(i)(ii)(A) to be used for financing Ongoing Park Maintenance during the applicable Maintenance Period.

**"Ongoing Park Maintenance"** means the costs of operating and maintaining Improvements constructed pursuant to the Parks and Open Space Plan within the Redevelopment Plan Area, including installing landscaping, all personnel or third-party maintenance costs, costs of maintaining irrigation systems and other equipment directly related to maintenance, maintenance or replacement as needed of landscape areas, water features, bathrooms, trash receptacles, park benches, planting containers, picnic tables, and other equipment or fixtures installed in areas to be maintained, insurance costs, and any other related overhead costs, along with Authority personnel, administrative, and overhead costs related to maintenance or to contracting for and managing third-party maintenance.

**"Parks and Open Space Plan"** is defined in the DDA.

**"Payment Request"** is defined in the Acquisition and Reimbursement Agreement.

**"Permissible Financing Cost"** is defined in the Conveyance Agreement.

**"Person"** is defined in the DDA.

**"Pre-Development Costs"** means reasonable costs actually incurred and paid and directly related to the development, Entitlement, acquisition and implementation of the Project incurred by Developer between the execution of the Exclusive Negotiating Agreement between Authority and Developer and the Initial Closing, including architectural, engineering, environmental, consultant, community outreach, legal and other professional fees; real property taxes and assessments; insurance expenses; title and survey, sales and marketing expenses; project management costs, security and

site maintenance; fees and charges for bonds and permits; and City cost reimbursements. The following shall not constitute "Pre-Development Costs": (1) Repayment of the principal, fees and interest of any loan or other expense that is not also a Permissible Financing Cost; or (2) distributions, preferred return or other capital return to the members of the Developer. Pre-Development Costs also include a compound return on all such costs equal to 20% per annum.

**"Pre-Development Return"** means the liquidated sum that reflects the accrued return on the Pre-Development Costs as of the Reference Date.

**"Principal Payment Date"** means, (i) if CFD Bonds have not yet been issued for a CFD, September 1 of each year, and (ii) if CFD Bonds have been issued for a CFD, the calendar date on which principal or sinking fund payments on such CFD Bonds are, in any year, payable (for example, if the principal amount of CFD Bonds are payable on September 1, the Principal Payment Date shall be September 1, regardless of whether principal payments are actually due in any particular year).

**"Project"** is defined in the DDA.

**"Project Account"** is defined in Section 1.1(c)(i).

**"Project Costs"** means, without duplication: (a) Development Costs; (b) Initial Navy Consideration; (c) Pre-Development Costs, and (d) any other amounts specifically identified in the DDA as a Project Cost.

**"Project Grants"** means State and federal funding.

**"Project Site"** is defined in the DDA.

**"Project Special Taxes"** means special taxes authorized to be levied in a CFD under the CFD Act, including all delinquent Project Special Taxes collected at any time by payment or through foreclosure proceeds.

**"Promissory Note"** is defined in the Conveyance Agreement.

**"Public Financing"** means, individually or collectively as the context requires, CFD Bonds, Tax Allocation Debt, Supplemental Obligation Financing, and Alternative Financing.

**"Public Property"** is defined in the DDA.

**"Qualified"** when used in reference to Project Costs, Pre-Development Costs, and other capital public facility costs, means: (a) with respect to a CFD, the Project Costs, the Pre-Development Costs, and other authorized capital public facility costs, each to the extent authorized to be financed under the CFD Act, Tax Laws (if applicable), and this Financing Plan; (b) with respect to financing from Net Available Increment or Tax Allocation Debt, the Project Costs and the Pre-Development Costs,

each to the extent authorized to be financed under the CCRL, Tax Laws (if applicable), and this Financing Plan; (c) with respect to a Supplemental Obligation Financing or an Alternative Financing, the Project Costs and the Pre-Development Costs, each to the extent authorized to be financed under the laws governing the Supplemental Obligation Financing or Alternative Financing, Tax Laws (if applicable), and this Financing Plan; and (d) with respect to which Authority has made a Reasonableness Determination.

**"Quarter"** means a three-month period commencing on the first day of the Initial Closing and continuing until the Termination Date of the Conveyance Agreement.

**"Reasonableness Determination"** means with respect to Project Costs, that Authority, in consultation with its expert independent financial advisors, has determined that Developer's costs that would otherwise meet the definition of "Project Costs" are reasonable.

**"Reassessment"** is defined in Section 3.1(d)(i).

**"Records"** is defined in Section 1.6(a).

**"Redesign Plan"** means an Authority plan to re-entitle, redesign and rebuild portions of the Project.

**"Redevelopment Plan"** is defined in the DDA.

**"Redevelopment Plan Area"** is defined in the DDA.

**"Redevelopment Plan Redesign Costs"** means the anticipated costs necessary to prepare, entitle and implement the Redesign Plan.

**"Reference Date"** is defined in the DDA.

**"Remainder Taxes"** means, in each year, as of the day following the Principal Payment Date for a CFD, all Project Special Taxes collected prior to such date in such CFD in excess of the total of: (a) debt service on the outstanding CFD Bonds for the applicable CFD due in the current calendar year, if any; (b) priority and any other reasonable administrative costs for the applicable CFD payable in that Authority Fiscal Year; and (c) amounts levied to replenish the applicable reserve fund as of the Principal Payment Date, including amounts reserved for reasonable anticipated delinquencies, if any.

**"Remainder Taxes Project Account"** is a separate account created by Authority for each CFD and maintained by Authority to hold all Remainder Taxes for the corresponding CFD to be used for financing Ongoing Park Maintenance, Qualified Project Costs or Additional Community Facilities in the manner set forth in this Financing Plan.

**"Reporting Period"** is defined in Section 1.6(a).

**"RMA"** means the rate and method of apportionment of Project Special Taxes for a CFD, adopted in accordance with applicable law.

**"Schedule of Performance"** is defined in the DDA.

**"Second Tier Participation"** means the consideration paid to the Navy equal to 35% of Net Cash Flow generated by the Project in excess of a Developer 22.5% IRR.

**"Second Tier Payment"** is defined in Section 1.3(c)(iii).

**"Second Tranche"** means, calculated separately for each CFD, one or more series of CFD Bonds secured by the levy of Project Special Taxes in such CFD to be used by Authority to finance Additional Community Facilities or for any other purpose authorized by the CFD Act.

**"Soft Costs"** means Developer's reasonable out-of-pocket costs actually incurred and paid on or after the Initial Closing (except as otherwise provided below or in Section 5.11 of the Conveyance Agreement) and attributable to the following: designing the Horizontal Improvements and improvements on the Critical Commercial Lots; marketing and selling the Lots, including Auction costs; Entitlements; architectural, engineering, consultants, community outreach, attorney and other professional fees; real property taxes and assessments; Permissible Financing Costs; insurance expenses, including environmental insurance; sales and marketing expenses; security and site maintenance; customary closing costs incurred in connection with sales of the Lots; Authority Costs Payments; costs and subsidies incurred pursuant to the DDA, including, without limitation: costs and subsidies not otherwise included in Hard Costs related to implementation of the transportation program, affordable housing and transition housing program, rehabilitation of the historic buildings, development of the Critical Commercial Lots, development of the parks and open space, and public art; any Initial Consideration, Additional Consideration, and interest payments on both, and expenses incurred by Developer related to management of existing facilities and open space under a management agreement with the Authority. Without limiting the foregoing, the following shall not constitute "Soft Costs": (1) repayment of the principal and interest, fees or costs of any loan, investment or financing other than Permissible Financing Costs; and (2) distributions, preferred return or other capital return to the members of Developer; and (3) costs and fees related to compliance and reporting to lenders other than those required for any financing allowed under Permissible Financing Costs.

**"Special Tax Requirement"** is defined in Section 2.3(i).

**"State"** is defined in the DDA.

**"Statement of Indebtedness"** means the report Authority must file for each Authority Fiscal Year under section 33675 of the CCRL.



**"Subordinate Pledge"** is defined in Section 3.1(a).

**"Sub-Phase"** is defined in the DDA.

**"Sub-Phase Approval"** is defined in the DDA.

**"Subsequent Owner Property"** means any Undeveloped Property within a CFD owned by a Person other than Developer.

**"Supplemental Obligation Financing"** is defined in Section 4.1(b).

**"Supplemental Obligations"** is defined in Section 4.1(b).

**"Tax Allocation Agreement"** means that certain Tax Increment Allocation Pledge Agreement, by and between the City and Authority, as amended from time to time with the Approval of Developer in its sole discretion, the form of which is attached hereto as Exhibit H-B.

**"Tax Allocation Debt"** means any bonded indebtedness that Authority incurs to finance Qualified Project Costs that is secured by a pledge of Net Available Increment, but not including any Supplemental Obligation Financing or CFD Bonds.

**"Tax Laws"** means the Internal Revenue Code of 1986, as amended, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under said Internal Revenue Code.

**"Taxable Parcel"** means an assessor's parcel of real property or other assessor's parcel of property (e.g., a condominium parcel) within a CFD that is not an Exempt Parcel.

**"Taxable Residential Unit"** means: (a) Market Rate Units; and (b) Inclusionary Units.

**"Term"** is defined in the Conveyance Agreement.

**"Termination Date"** is defined in the Conveyance Agreement.

**"Tidelands Trust"** is defined in the \_\_\_\_\_.

**"Total Developer Contribution Balance"** means, the Unpaid Balance plus Accrued Interest.

**"Total Tax Obligation"** means, with respect to a Taxable Residential Unit at the time of calculation, the sum of: (a) the ad valorem taxes actually levied or projected to be levied if the Taxable Residential Unit were developed at the time of calculation; (b) the Assigned Project Special Tax Rates levied or projected to be levied if the



Taxable Residential Unit were developed at the time of calculation; (c) all installments of special assessments if the Taxable Residential Unit were developed at the time of calculation; and (d) all other special taxes (based on assigned special tax rates) or assessments secured by a lien on the Taxable Residential Unit levied or projected to be levied if the Taxable Residential Unit were developed at the time of calculation.

**"Transfer"** is defined in the DDA.

**"Transferee"** is defined in the DDA.

**"2% Limitation"** is defined in Section 2.3(e).

**"Underwriter"** is defined in Section 4.4(b)(v).

**"Underwriter Force Majeure"** is defined in Section 4.4(b)(v).

**"Undeveloped Property"** means, in any Authority Fiscal Year, Taxable Parcels in a CFD that are not Developed Property.

**"Unpaid Balance"** means, as of any date of calculation, the Developer Contribution less the Cumulative Developer Maintenance Contributions.

**"Work Program"** a work program for a Redesign Plan submitted by Authority to the Navy.

**EXHIBIT H-A**

**Form of Acquisition and Reimbursement Agreement**

[ ATTACHED ]

**EXHIBIT H-B**

**Tax Allocation Agreement**

[ ATTACHED ]

**Exhibit 1**
**Treasure Island: Sources and Uses**
**Comments**
**Sources:**

TICD Private Capital	\$	517,014,000
Project Generated Public Financing		
Mello Roos	\$	421,690,000
Tax Increment	\$	514,479,000
<b>Total Sources</b>	<b>\$</b>	<b>1,453,183,000</b>

**Uses:**

<b>Property Acquisition Costs/Payments to Navy</b>		
Initial Land Payment, excluding interest carry cost	\$	55,000,000
Interest Carry on Initial Payment	\$	12,375,000
Additional Consideration	\$	50,000,000
<b>Subtotal Property Acquisition Costs</b>	<b>\$</b>	<b>117,375,000</b>

**Infrastructure Costs**

Island Stabilization and Geotech Improvements	\$	140,665,000
Parks & Open Space	\$	85,428,000
Utilities (Water, Wastewater, Storm, Dry Utilities)	\$	123,271,000
Community Facilities and Amenities	\$	29,000,000
Street Improvements/Viaducts/Ramps	\$	34,141,000
Demolition/Deconstruction	\$	36,751,000
Design and Engineering	\$	53,821,000
Fees, Bonds & Permits	\$	16,386,000
Construction Management	\$	21,848,000
Contingency <sup>1</sup>	\$	126,052,000
<b>Subtotal</b>	<b>\$</b>	<b>667,363,000</b>
Share of Horizontal Costs Supporting Affordable Housing	\$	(226,607,000)
<b>Subtotal Infrastructure</b>	<b>\$</b>	<b>440,756,000</b>

**Transportation Program**

Capital Costs (Buses, Shuttles, Parking)	\$	42,285,000
Ferry Quay and Terminal	\$	30,044,000
Operating Shortfall	\$	19,006,000
<b>Subtotal Transportation Program</b>	<b>\$</b>	<b>91,335,000</b>

**Affordable & Transition Housing**

Gap Funding for TIHDI and TIDA Units <sup>2</sup>	\$	92,365,000
Share of Horizontal Costs Supporting Affordable Housing	\$	226,607,000
<b>Subtotal Affordable Housing</b>	<b>\$</b>	<b>318,972,000</b>

**Environmental Remediation**

\$ 45,101,000 Remediation costs above Navy's scope

**Historic Rehab Costs & Retail Subsidy**

\$ 39,000,000

**Other Costs**

Planning & Entitlement	\$	55,939,000	
O&M - Parks and Open Space	\$	39,748,000	
City Costs/TIDA Admin	\$	25,375,000	
Closing Costs	\$	28,034,000	2.5% of Total Land Revenue
Marketing Costs	\$	31,191,000	3.0% of Residential Land Revenue
Project Management	\$	23,448,000	3.0% of Hard Costs
Interim Project Management	\$	31,385,000	
Other (Misc Expenses, Taxes, etc.)	\$	47,156,000	
<b>Subtotal Other Costs</b>	<b>\$</b>	<b>282,277,000</b>	

Subtotal All Uses \$ 1,334,814,000

Inflation to Costs \$ 118,370,000 2.0% Cost Inflation starting in 2011

**Total Uses** **\$ 1,453,183,000**

1) Contingency Budget includes contingency on Transportation Capital Costs, Environmental Remediation and Historic Building Rehab costs.

2) Excludes \$79 million in contribution of Inclusionary Housing Units

**Table 1**  
**Net New Fiscal Impacts (General Fund)\***  
**Treasure Island Redevelopment (2010\$)**

Item	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
<b>REVENUES</b>										
Possessory Interest/Property Tax	\$0	\$0	\$31,822	\$119,007	\$327,129	\$661,250	\$1,190,323	\$1,764,199	\$2,258,822	\$2,877,943
GF Property Tax Redev. Pass Through (1)	\$0	\$0	\$0	\$47,519	\$130,190	\$388,299	\$658,986	\$1,118,477	\$1,515,933	\$1,857,077
Property Tax In Lieu of Vehicle License Fees	\$0	\$640,500	\$593,843	\$1,998,931	\$2,423,270	\$2,340,379	\$3,277,967	\$3,200,575	\$3,891,490	\$3,858,908
Property Transfer Tax	\$0	\$0	\$0	\$225,228	\$309,541	\$425,250	\$575,523	\$747,289	\$1,011,723	\$1,479,770
Sales and Use Tax (2)	\$0	\$0	\$0	\$112,614	\$154,770	\$212,625	\$287,761	\$364,413	\$505,862	\$739,885
Sales Tax Allocation to Public Safety	\$0	\$0	\$624	\$18,869	\$47,250	\$86,988	\$137,226	\$194,413	\$257,406	\$331,689
Telephone Users Tax	\$0	\$0	\$590	\$17,839	\$44,671	\$82,242	\$129,738	\$183,805	\$243,360	\$313,590
Access Line Tax	\$0	\$0	\$980	\$1,239	\$1,476	\$2,424	\$3,101	\$3,104	\$3,104	\$6,621
Water Users Tax	\$0	\$0	\$1,307	\$20,235	\$24,103	\$28,472	\$304,317	\$379,842	\$469,800	\$1,002,069
Gas Electric Steam Users Tax	\$0	\$0	\$12,116	\$187,564	\$223,447	\$263,944	\$304,317	\$379,842	\$469,800	\$1,002,069
Payroll Tax	\$0	\$0	\$305	\$4,728	\$5,632	\$6,653	\$7,671	\$9,574	\$11,842	\$25,258
Business License Tax	\$0	\$0	\$0	\$8,498	\$33,000	\$67,770	\$112,242	\$161,459	\$215,349	\$258,617
Licenses, Permits, and Franchise Fees	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Fines, Forfeitures, and Penalties	\$0	\$0	\$0	\$1,298	\$5,042	\$10,354	\$17,148	\$24,667	\$32,900	\$39,510
Hotel Room Tax	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$482,251	\$482,251
VLF Realignment to Health and Welfare	\$0	\$0	\$0	\$15,448	\$59,990	\$123,199	\$204,045	\$283,516	\$391,483	\$470,140
Sales Tax Realignment to Health and Welfare	\$0	\$0	\$0	\$33,249	\$129,119	\$255,164	\$439,169	\$631,739	\$842,596	\$1,011,890
<b>Subtotal</b>	<b>\$0</b>	<b>\$640,500</b>	<b>\$640,688</b>	<b>\$2,812,289</b>	<b>\$3,918,630</b>	<b>\$4,954,333</b>	<b>\$7,376,955</b>	<b>\$9,246,697</b>	<b>\$12,184,597</b>	<b>\$14,963,312</b>
<b>EXPENDITURES</b>										
Elections (3)	\$0	\$0	\$0	\$4,138	\$16,069	\$33,000	\$54,655	\$78,621	\$104,862	\$125,931
Assessor/Recorder (4)	\$0	\$0	\$0	\$105,530	\$105,530	\$105,530	\$105,530	\$105,530	\$105,530	\$105,530
311 (5)	\$0	\$0	\$0	\$2,768	\$10,747	\$22,071	\$36,555	\$52,584	\$70,135	\$84,226
Police Services (6)	\$0	\$0	\$0	\$78,293	\$304,039	\$624,390	\$1,034,125	\$1,487,575	\$1,984,086	\$2,381,729
Fire Protection (7)	\$0	\$0	\$0	\$0	\$0	\$1,309,395	\$2,566,396	\$3,651,057	\$3,651,057	\$3,651,057
911 Emergency Response (8)	\$0	\$0	\$0	\$5,671	\$22,024	\$45,230	\$74,910	\$107,757	\$143,724	\$172,601
MTA/MUNI (9)	\$0	\$58,606	\$57,248	\$218,748	\$291,897	\$349,548	\$545,623	\$671,168	\$844,191	\$958,894
Department of Public Health (10)	\$0	\$0	\$0	\$15,103	\$58,652	\$120,450	\$199,491	\$286,965	\$382,746	\$459,648
DPW (11)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$59,398	\$103,570
Library / Community Facilities (12)	\$0	\$0	\$0	\$0	\$0	\$0	\$758,948	\$1,256,072	\$1,753,196	\$2,173,196
<b>Subtotal</b>	<b>\$0</b>	<b>\$58,606</b>	<b>\$57,248</b>	<b>\$430,252</b>	<b>\$808,958</b>	<b>\$2,609,615</b>	<b>\$5,756,233</b>	<b>\$7,697,328</b>	<b>\$9,098,952</b>	<b>\$9,837,383</b>
<b>NET</b>	<b>\$0</b>	<b>\$581,894</b>	<b>\$583,440</b>	<b>\$2,382,037</b>	<b>\$3,109,672</b>	<b>\$2,344,718</b>	<b>\$2,000,721</b>	<b>\$1,549,368</b>	<b>\$3,085,672</b>	<b>\$5,125,930</b>
<b>ADDITIONAL REVENUES (Restricted, Non-Gen. Fund)</b>										
Hotel Room Tax	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$419,153	\$419,153
Children's Fund (13)	\$0	\$0	\$1,685	\$6,302	\$17,324	\$36,077	\$63,036	\$93,428	\$119,621	\$157,704
Library Fund (13)	\$0	\$0	\$1,404	\$5,252	\$14,437	\$30,064	\$52,530	\$77,856	\$99,685	\$131,420
Open Space Fund (13)	\$0	\$0	\$1,404	\$5,252	\$14,437	\$30,064	\$52,530	\$77,856	\$99,685	\$131,420
<b>Subtotal</b>	<b>\$0</b>	<b>\$0</b>	<b>\$4,494</b>	<b>\$16,806</b>	<b>\$46,197</b>	<b>\$96,206</b>	<b>\$168,097</b>	<b>\$249,140</b>	<b>\$738,143</b>	<b>\$839,698</b>

\*Note: All numbers shown in constant 2010\$.  
Certain revenues shown are dedicated to specific purposes.  
Revenues and expenditures represent incremental increase from new development over existing baseline.  
See additional notes following the table.

Table 1  
Net New Fiscal Impacts (General Fund)\*  
Treasure Island Redevelopment (2010's)

Item	2021	2023	2024	Fiscal Year Ending			2027	2028	2029	Buildout
				2025	2026					2030
REVENUES										
Possessory Interest/Property Tax										
GF Property Tax Redev. Pass Through (1)	\$3,849,642	\$4,684,579	\$5,359,034	\$6,373,208	\$6,565,531	\$6,927,264	\$7,182,401	\$7,182,401	\$7,182,401	\$7,182,401
Property Tax In Lieu of Vehicle License Fees	\$2,589,769	\$3,158,750	\$3,836,548	\$4,165,887	\$4,694,423	\$4,981,613	\$5,362,559	\$5,362,559	\$5,362,559	\$5,362,559
Property Transfer Tax	\$4,149,594	\$4,087,361	\$3,993,270	\$4,011,946	\$3,940,071	\$3,605,573	\$3,365,573	\$3,365,573	\$3,365,573	\$3,365,573
Sales and Use Tax (2)	\$1,659,589	\$1,811,222	\$1,930,667	\$2,049,891	\$2,144,575	\$2,267,398	\$2,267,398	\$2,267,398	\$2,267,398	\$2,267,398
Sales Tax Allocation to Public Safety	\$829,794	\$905,611	\$965,333	\$1,024,945	\$1,072,288	\$1,118,486	\$1,163,699	\$1,163,699	\$1,163,699	\$1,163,699
Telephone Users Tax	\$363,977	\$432,678	\$450,744	\$507,493	\$507,046	\$562,145	\$602,712	\$632,380	\$665,487	\$695,474
Access Line Tax	\$363,970	\$409,068	\$444,887	\$479,801	\$507,741	\$531,471	\$562,145	\$592,874	\$629,174	\$665,487
Water Users Tax	\$7,918	\$8,145	\$8,324	\$8,476	\$8,597	\$8,699	\$8,792	\$8,885	\$8,978	\$9,071
Gas Electric Steam Users Tax	\$129,266	\$132,966	\$135,885	\$138,365	\$140,353	\$142,007	\$143,712	\$145,466	\$147,269	\$149,121
Payroll Tax	\$1,198,346	\$1,232,646	\$1,259,707	\$1,282,698	\$1,301,126	\$1,316,453	\$1,332,475	\$1,349,188	\$1,366,599	\$1,384,712
Business License Tax	\$30,205	\$31,070	\$31,752	\$32,331	\$32,756	\$33,182	\$33,608	\$34,034	\$34,460	\$34,886
Licenses, Permits, and Franchise Fees	\$298,486	\$340,904	\$374,613	\$407,612	\$434,021	\$458,475	\$484,021	\$509,669	\$535,417	\$561,165
Fines, Forfeitures, and Penalties	\$45,601	\$52,082	\$57,231	\$62,380	\$66,308	\$69,738	\$73,566	\$77,051	\$80,536	\$84,021
Hotel Room Tax	\$1,645,778	\$1,645,778	\$1,645,778	\$1,645,778	\$1,645,778	\$1,645,778	\$1,645,778	\$1,645,778	\$1,645,778	\$1,645,778
VLF Realignment to Health and Welfare	\$542,618	\$519,730	\$581,008	\$740,998	\$789,016	\$829,825	\$875,140	\$916,850	\$970,661	\$1,020,472
Sales Tax Realignment to Health and Welfare	\$1,187,888	\$1,333,656	\$1,455,745	\$1,564,863	\$1,668,214	\$1,768,048	\$1,863,579	\$1,973,353	\$2,089,171	\$2,205,000
Subtotal	\$18,893,439	\$20,866,445	\$22,660,366	\$24,066,890	\$25,395,566	\$26,730,823	\$27,866,028	\$28,454,354	\$29,129,963	\$29,889,171
EXPENDITURES										
Elections (3)	\$145,345	\$166,000	\$182,414	\$198,483	\$211,345	\$222,276	\$234,414	\$245,586	\$260,000	\$260,000
Assessor/Recorder (4)	\$105,530	\$105,530	\$105,530	\$105,530	\$105,530	\$105,530	\$105,530	\$105,530	\$105,530	\$105,530
311 (5)	\$97,211	\$111,025	\$122,003	\$132,751	\$141,353	\$148,664	\$156,782	\$164,255	\$173,895	\$173,895
Police Services (6)	\$2,750,056	\$3,140,871	\$3,451,435	\$3,755,474	\$3,998,836	\$4,205,661	\$4,435,322	\$4,646,714	\$4,919,436	\$4,919,436
Fire Protection (7)	\$3,651,057	\$3,651,057	\$3,651,057	\$3,651,057	\$3,651,057	\$3,651,057	\$3,651,057	\$3,651,057	\$3,651,057	\$3,651,057
911 Emergency Response (8)	\$199,210	\$227,519	\$250,016	\$272,040	\$289,669	\$304,651	\$321,287	\$336,600	\$356,356	\$356,356
MTA/MUNI (9)	\$1,211,994	\$1,419,037	\$1,618,381	\$1,854,321	\$1,981,542	\$1,981,824	\$3,403,882	\$3,471,875	\$3,524,474	\$3,524,474
Department of Public Health (10)	\$530,508	\$605,889	\$665,810	\$724,461	\$771,408	\$811,306	\$855,609	\$896,389	\$948,999	\$948,999
DWP (11)	\$1,753,196	\$1,753,196	\$1,753,196	\$1,753,196	\$1,753,196	\$1,753,196	\$1,753,196	\$1,753,196	\$1,753,196	\$1,753,196
Library / Community Facilities (12)	\$10,606,009	\$11,503,190	\$11,964,743	\$12,599,268	\$13,235,412	\$13,519,467	\$15,213,030	\$15,551,047	\$15,951,985	\$15,951,985
Subtotal	\$8,285,430	\$9,383,255	\$10,695,622	\$11,497,622	\$12,150,154	\$12,211,356	\$12,472,998	\$12,894,307	\$13,177,978	\$13,267,885
ADDITIONAL REVENUES (Restricted, Non-Gen. F.)										
Hotel Room Tax	\$1,430,442	\$1,430,442	\$1,430,442	\$1,430,442	\$1,430,442	\$1,430,442	\$1,430,442	\$1,430,442	\$1,430,442	\$1,430,442
Children's Fund (13)	\$208,867	\$246,083	\$283,801	\$314,225	\$337,509	\$347,694	\$366,850	\$380,362	\$390,362	\$390,362
Library Fund (13)	\$169,889	\$206,736	\$236,501	\$261,854	\$281,257	\$289,745	\$305,709	\$316,968	\$330,968	\$330,968
Open Space Fund (13)	\$197,088	\$209,998	\$218,744	\$226,683	\$235,466	\$244,250	\$253,033	\$261,816	\$270,600	\$270,600
Subtotal	\$1,974,088	\$2,091,998	\$2,187,244	\$2,268,375	\$2,330,466	\$2,375,626	\$2,408,710	\$2,444,740	\$2,444,740	\$2,444,740

\*Note: All numbers shown in constant 2010's.  
Certain revenues shown are dedicated to specific pur-  
poses and expenditures represent incremental in-  
creases. See additional notes following the table.

**Notes to Table 1:**

- (1) Property tax includes supplemental role revenues from new assessed value added during year of construction and initial sale.
- (2) Sales tax includes resident expenditures on TI and elsewhere in the City.
- (3) Assumes the estimated cost grows in proportion to the population.
- (4) Assumes a staff cost incurred from the beginning of unit sales through buildout.
- (5) "311" costs based on estimated calls and required staffing/costs.
- (6) Additional officers are added to achieve 1,665 officers/1,000 residents and employees (Citywide average) increased by 20% to reflect TI/YBI isolation.
- (7) Additional engine company, ambulance, and battalion chief added upon construction of police/fire "superstation".
- (8) "311" based on estimated calls and required staffing/costs.
- (9) Muni operations to TI and YBI are fully funded; costs include 80% of MUNI capital costs for buses, balance are included in project pro forma.  
MTA/Muni costs include transfer of 9.15% of General Fund revenues, and any additional transfers needed to cover increases in net costs above existing net costs.
- (10) Dept. of Public Health costs based on estimates of hospital admissions and emergency room visits not reimbursed from other sources.
- (11) DPW costs include rehab and reconstruction of roads and related facilities, including pothole repair and patching, and street sweeping. Cost is net of gas tax revenues.
- (12) Library and Community Facilities include initial cost of furnishings, fixtures and equipment amortized over 5 years (plus initial partial two years).
- (13) Property tax pass-throughs accrue to other funds.









**AGENDA ITEMS 8 AND 9**  
**Treasure Island Development Authority**  
**City and County of San Francisco**  
**Meeting of February 23, 2011**

**Subject:** *Conditionally Approving and Adopting Rules Governing Participation by Property Owners and the Extension of Reasonable Preferences to Business Occupants in the Treasure Island/Yerba Buena Island Redevelopment Project and Conditionally Adopting California Department of Housing and Community Development Title 25 Relocation Assistance and Real Property Acquisition Guidelines, With Certain Modifications*

Rich Hillis, Director of Redevelopment, Office of Economic and Workforce

**Contact:** Development

Michael Tymoff, Deputy Director of Redevelopment, Office of Economic and Workforce Development

Jon Yolles, Project Manager, Office of Economic and Workforce Development

**Summary of Proposed Action**

Conditionally approving and adopting Owner Participation Rules in conformance with Sections 33339.5 and 33345 of the California Community Redevelopment Law, which provides that a redevelopment agency shall adopt rules regarding owner participation in redevelopment and extending reasonable preferences to businesses in connection with the implementation of the Redevelopment Plan. Also, conditionally adopting Relocation Guidelines and Rules in conformance with California Government Code Section 7267.8, which requires redevelopment agencies to adopt rules and regulations to implement relocation assistance, if any should be required.

**Background**

The Treasure Island Development Authority ("TIDA" or "the Authority") has prepared a draft Redevelopment Plan for the Treasure Island/Yerba Buena Island Redevelopment Project (the "Redevelopment Plan"). As a specific requirement of California Community Redevelopment Law ("CCRL"), a redevelopment agency (in this case, TIDA) must adopt rules to implement the operation of owner participation in connection with the Redevelopment Plan (CCRL Section 33345) and to extend reasonable preferences to eligible businesses to re-enter into business in the Project Area (CCRL Section 33339.5). Both matters are usually addressed in one document, as proposed here. TIDA must also comply with California Government Code Section 7267.8, which requires redevelopment agencies to adopt rules and regulations to implement required relocation assistance. Many redevelopment agencies comply with this requirement by adopting the Relocation Assistance and Property Acquisition Guidelines published by the California Department of Housing and Community Development (25 California Code of Regulations Sections 6000 *et seq.*) (as they may be amended from time to time, the "Title 25 State Guidelines"). A copy of the Title 25 State Guidelines is attached hereto as Exhibit A.

The proposed *Rules Governing Participation by Property Owners and the Extension of Reasonable Preferences to Business Occupants in the Treasure Island/Yerba Buena*

*Island Redevelopment Project* ("Owner Participation Rules" or "OPR") and the proposed adoption of the Title 25 State Guidelines, with certain modifications to the grievance procedure as described below, are before the TIDA Board of Directors for conditional approval and adoption.

### ***Owner Participation Rules***

The proposed Owner Participation Rules, a copy of which is attached hereto as Exhibit B, is a document prepared in conjunction with the proposed Redevelopment Plan for the Treasure Island/Yerba Buena Redevelopment Project Area ("Project Area"). Under CCRL, a redevelopment agency, in this case TIDA, must adopt and make available for public review the Owner Participation Rules before the Redevelopment Plan is adopted.

### **Eligibility**

The Authority presently contemplates that in carrying out the Redevelopment Plan, nearly all of Project Area will be acquired by the Authority via an Economic Development Conveyance from the U.S. Navy. The Authority will transfer portions of the property into private ownership via one or more Disposition and Development Agreements, and will retain portions of the property for public improvements, facilities, and utilities and for other uses and purposes in accordance with the Redevelopment Plan. Therefore, owner participation opportunities are limited to persons who are or may become owners of real property in the Project Area other than on a temporary or interim basis, subsequent to the initial disposition by TIDA of any land in the Project Area.

### **Types of Participation**

Future property owners will be given a reasonable opportunity to participate in redevelopment by:

- (1) Retaining all or a portion of their properties and developing or improving such property for use in accordance with the Redevelopment Plan;
- (2) Acquiring adjacent or other properties within the Project Area and developing or improving such property for use in accordance with the Redevelopment Plan; or
- (3) Selling their properties to the Authority and purchasing other properties in the Project Area.

### **Owner Participation Agreements**

As there are no private owners of property in the Project Area at the time of adoption of the Redevelopment Plan, the Authority does not initially contemplate entering into Owner Participation Agreements. A future owner wishing to participate in redevelopment within the Project Area may be required, as a condition to participation, to enter into an Owner Participation Agreement with the Authority if the Authority determines it is necessary to impose upon the property any of the standards, restrictions, and controls of the Redevelopment Plan. The Agreement may require the participant to join in the recordation of such documents as the Authority may require in order to ensure

the property will be developed and used in accordance with the Redevelopment Plan and the Owner Participation Agreement.

An Owner Participation Agreement will obligate the owner, his or her heirs, successors and assigns, and tenants to devote the property to the uses specified in the Redevelopment Plan, abide by all provisions and conditions of the Redevelopment Plan for the period of time that the Redevelopment Plan is in force and effect, and comply with all the provisions of the Owner Participation Agreement according to their terms, duration, and effect.

### **Preferences for Eligible Businesses**

Future business occupants engaged in business within the Project Area, other than on an interim or temporary basis, who desire to remain within the Project Area will be extended a reasonable preference to remain or reenter in business within the Project Area if they otherwise meet the requirements prescribed in the OPR and the Redevelopment Plan, provided said business occupants are able to demonstrate the financial ability to remain or reenter in business within the Project Area.

### ***Adoption of Relocation Rules and Regulations***

As required under California Government Code Section 7267.8, TIDA must adopt rules and regulations to implement relocation assistance, should any be required.

Implementation of the Redevelopment Plan is not expected to result in the displacement of any persons that would trigger relocation assistance under the California Relocation Assistance Act (Government Code Section 7260 *et seq.*) and its implementing regulations (the "California Relocation Act"). All residential occupants currently living in the Project Area moved to the Project Area after TIDA had acquired a leasehold interest and began managing the property. As a result, all occupants are "post-acquisition tenants" and as such, are not "displaced persons" entitled to statutory relocation benefits.

As a matter of policy, however, on December 12, 2006 the Board of Supervisors adopted a resolution ("2006 BOS Resolution") endorsing the Development Plan and Term Sheet for the redevelopment of former Naval Station Treasure Island, and recommending that TIDA provide all existing households with certain benefits. In accordance with the 2006 BOS Resolution, TIDA proposes to adopt Transition Housing Rules and Regulations in conjunction with the proposed Disposition and Development Agreement ("DDA") with Treasure Island Community Development, LLC. All Transitioning Households, as that term is defined in the Transition Housing Rules and Regulations, will be offered the opportunity to move to alternate housing within the Project Area, even though the Transitioning Households are not displaced persons entitled to statutory relocation benefits.

In addition, pursuant to the proposed agreement to be entered into between TIDA and the Treasure Island Homeless Development Initiative ("TIHDI"), as the proposed Redevelopment Plan is implemented, TIHDI residents will have the opportunity to move to alternate housing in the Project Area in accordance with a separate agreement and transition plan for TIHDI Residents.

Although no existing occupants will be considered "displaced persons," TIDA is establishing for the Project Area a method and plan for relocation in the event that, over the course of implementation of the Redevelopment Plan, there are "displaced persons" in the Project Area.

TIDA staff is recommending that TIDA adopt for local use the Title 25 State Guidelines, excluding any sections regarding the procedures or requirements for handling grievances of displaced persons. Due to the unique circumstances of the Project Area and the desirability of having a uniform procedure to resolve issues arising from the Transition Rules and Regulations and the California Relocation Act, TIDA staff is recommending that any grievance of displaced persons will be resolved in the manner set forth in the Transition Housing Rules and Regulations as described below.

The Title 25 State Guidelines include the following requirements:

1. Redevelopment activities will be carried out in a manner that minimizes displacement, relocation and hardship.
2. No persons or families of low- and moderate-income subject to displacement and relocation shall be required to move unless and until there is a suitable housing unit available and ready for occupancy by such persons, that is safe, decent and sanitary and available at comparable rents.
3. All persons subject to displacement and relocation will be afforded the opportunity to live in a decent, safe and sanitary dwelling without overcrowding.
4. The cost of such housing shall be reasonable relative to family income.
5. There will be no discrimination based upon race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry or any other characteristic protected by State or Federal Law in relocation activities.
6. Persons to be displaced and relocated will be offered the opportunity to occupy housing that is reasonably accessible to their places of employment, public transportation, shopping and public facilities.
7. Persons eligible for relocation will be made aware of the availability of relocation benefits and assistance within 30 days following the initiation of negotiations for a parcel of property.
8. Each household eligible for relocation will be provided information on availability and prices of comparable sales and rental housing. When necessary, counseling and referral service will be provided.
9. Persons and families of low- and moderate-income subject to displacement and relocation by the redevelopment projects will be given priority in renting or buying low- or moderate-income housing units developed or assisted by TIDA.

#### **Proposed Grievance Procedure under Transition Rules and Regulations**

Any person who disagrees with a determination regarding eligibility for, or amount of, a relocation payment, or who believes TIDA has failed to refer him or her to comparable replacement housing, may have his or her claim reviewed. As a first step, a grievance



should be brought to the Executive Director of TIDA. If the grievant believes that his or her complaint has not been satisfactorily answered, he or she may appeal to the applicable Relocation Appeals Board. This Board will promptly hear all complaints relating to relocation and will determine if TIDA has complied with applicable laws. If the grievant is not satisfied with the decision of the Relocation Appeals Board, he or she may request a hearing before an Administrative Law Judge at the San Francisco Rent Board as the final step in the administrative remedies available to the grievant. The grievant may seek judicial review after the administrative remedies above have been exhausted.

### **Treasure Island/Yerba Buena Island Citizen's Advisory Board**

At its meeting on February 15, 2011, the Treasure Island/Yerba Buena Island Citizen's Advisory Board voted \_\_\_\_ to \_\_\_\_ to recommend that the TIDA Board approve and adopt the Owner Participation Rules and the Title 25 State Guidelines with the modifications to the grievance procedure described above.

### **Recommendation**

Staff recommends that the Treasure Island Development Authority Board of Directors approve the Owner Participation Rules and adopt the Title 25 State Guidelines, with the amendment described above relating to the adoption of the grievance procedures under the proposed Transition Housing Rules and Regulations, for the Treasure Island/Yerba Buena Island Redevelopment Project, conditioned upon the adoption of the Redevelopment Plan by the Board of Supervisors.

### **Exhibits**

- A. California Code of Regulations, Title 25, Chapter 6, Subchapter 1 (Section 6000 et seq.)
- B. Rules Governing Participation by Property Owners and the Extension of Reasonable Preferences to Business Occupants in the Treasure Island/Yerba Buena Island Redevelopment Project



1 [Owner Participation Rules]

2 **RESOLUTION CONDITIONALLY APPROVING AND ADOPTING RULES**  
3 **GOVERNING PARTICIPATION BY PROPERTY OWNERS AND THE EXTENSION**  
4 **OF REASONABLE PREFERENCES TO BUSINESS OCCUPANTS IN THE**  
5 **TREASURE ISLAND/YERBA BUENA ISLAND REDEVELOPMENT PROJECT.**

6 WHEREAS, Former Naval Station Treasure Island is a military base located on  
7 Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by  
8 the United States of America (the "Navy"); and,

9 WHEREAS, The Base was selected for closure and disposition by the Base  
10 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its  
11 subsequent amendments; and,

12 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,  
13 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit  
14 corporation known as the Treasure Island Development Authority (the "Authority") to act as a  
15 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and  
16 conversion of the Base for the public interest, convenience, welfare and common benefit of  
17 the inhabitants of the City and County of San Francisco; and,

18 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended  
19 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter  
20 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority  
21 as a redevelopment agency under the California Community Redevelopment Law (Sections  
22 33000 et seq. of the Health and Safety Code) ("CRL") with authority over the Base upon  
23 approval of the City's Board of Supervisors, and (ii) with respect to those portions of the Base  
24 which are subject to Tidelands Trust, vested in the Authority the authority to administer the  
25 public trust for commerce, navigation and fisheries as to such property; and,

1 WHEREAS, The Board of Supervisors approved the designation of the Authority as the  
2 redevelopment agency for Treasure Island in 1998; and,

3 WHEREAS, The Authority has prepared a proposed Redevelopment Plan  
4 ("Redevelopment Plan") for the Treasure Island/Yerba Buena Island Redevelopment Project  
5 ("Project Area"); and,

6 WHEREAS, Section 33345 of the CRL provides that a redevelopment agency shall  
7 adopt and make available for public inspection rules to implement the operation of owner  
8 participation in connection with a redevelopment plan; and,

9 WHEREAS, Section 33339.5 of the CRL provides that a redevelopment agency shall  
10 adopt and make available for public inspection rules regarding the extension of reasonable  
11 preferences to persons who are engaged in business in the project area to reenter in business  
12 within the redeveloped area if they otherwise meet the requirements prescribed by the  
13 redevelopment plan; now, therefore, be it

14 RESOLVED, That the Authority, in its role as the redevelopment agency for the  
15 Treasure Island/Yerba Buena Island Redevelopment Project, does hereby approve and adopt  
16 the Rules Governing Participation by Property Owners and the Extension of Reasonable  
17 Preferences to Business Occupants in the Treasure Island/Yerba Buena Island  
18 Redevelopment Project ("Owner Participation Rules") in substantially the form attached hereto  
19 as Exhibit A and incorporated herein by reference; and, be it

20 FURTHER RESOLVED, That the approval of the Owner Participation Rules is  
21 conditioned upon the adoption of the Redevelopment Plan by the Board of Supervisors of the  
22 City and County of San Francisco ("Board of Supervisors"); and, be it

23 FURTHER RESOLVED, That in the event the Board of Supervisors fails to take the  
24 above action, this approval shall be deemed moot and the adoption of the Owner Participation  
25 Rules shall be of no force or effect; and, be it

1           FURTHER RESOLVED, That the Board of Directors hereby authorizes the  
2   Redevelopment Project Director to enter into any additions, amendments or other  
3   modifications to the Owner Participation Rules that the Redevelopment Project Director  
4   determines in consultation with the City Attorney are in the best interests of the Authority, that  
5   do not materially increase the obligations or liabilities of the Authority, that do not materially  
6   reduce the rights of the Authority, and are necessary or advisable to complete the preparation  
7   and approval of the Owner Participation Rules, such determination to be conclusively  
8   evidenced by the execution and delivery by the Redevelopment Project Director of the  
9   documents and any amendments thereto

10  
11                                   **CERTIFICATE OF SECRETARY**

12           **I hereby certify that I am the duly elected Secretary of the Treasure Island**  
13   **Development Authority, a California nonprofit public benefit corporation, and that the**  
14   **above Resolution was duly adopted and approved by the Board of Directors of the**  
15   **Authority at a properly noticed meeting on February 23, 2011.**

16  
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18                                   \_\_\_\_\_  
                                  Jean-Paul Samaha, Secretary



**RULES GOVERNING PARTICIPATION BY PROPERTY OWNERS  
AND THE EXTENSION OF REASONABLE PREFERENCES TO  
BUSINESS OCCUPANTS IN THE  
TREASURE ISLAND/YERBA BUENA ISLAND REDEVELOPMENT PROJECT**

**Adopted by  
Treasure Island Development Authority  
Board of Directors  
Resolution No. [XX]  
[Date]**



## TABLE OF CONTENTS

	Page
I. [§100] PURPOSE AND INTENT.....	1
II. [§200] DEFINITIONS.....	1
III. [§300] ELIGIBILITY .....	2
IV. [§400] TYPES OF PARTICIPATION.....	2
V. [§500] CONFORMING OWNERS.....	3
VI. [§600] OWNER PARTICIPATION AGREEMENTS.....	3
VII. [§700] CONTENTS OF OWNER PARTICIPATION AGREEMENTS.....	3
VIII. [§800] PREFERENCE TO BUSINESS OCCUPANTS WITHIN THE PROJECT AREA.....	4
IX. [§900] AMENDMENT OF RULES.....	4

**RULES GOVERNING PARTICIPATION BY PROPERTY OWNERS  
AND THE EXTENSION OF REASONABLE PREFERENCES  
TO BUSINESS OCCUPANTS IN THE TREASURE ISLAND/YERBA BUENA ISLAND  
REDEVELOPMENT PROJECT**

**I.     [§100] PURPOSE AND INTENT**

These rules are adopted pursuant to the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.) in order to implement the provisions of the Redevelopment Plan for the Treasure Island/Yerba Buena Island Redevelopment Project regarding participation by property owners and the extension of reasonable preferences to business occupants within the Project Area. These rules set forth the procedures governing such participation and preferences.

It is the intention of the Authority to encourage and permit participation in the redevelopment of the Project Area by property owners and to extend reasonable preferences to business occupants of real property within the boundaries of the Project Area to the maximum extent consistent with the objectives of the Redevelopment Plan.

**II.    [§200] DEFINITIONS**

As used herein, the following definitions apply:

- (1)    "Authority" means the Treasure Island Development Authority.
- (2)    "Board of Supervisors" means the Board of Supervisors of the City and County of San Francisco, California.
- (3)    "Business Occupant" means any person, persons, corporation, association, partnership, or other entity engaged in business within the Project Area, other than on a temporary or interim basis, on or after the later of (a) the date of adoption of the Redevelopment Plan by the Board of Supervisors, or (b) the date of the Authority's initial disposition of any land in the Project Area.
- (4)    "Owner" means any person, persons, corporation, association, partnership, or other entity (a) holding title of record to real property in the Project Area on or after the date the date of adoption of the Redevelopment Plan by the Board of Supervisors and (b) who acquired such real property from a person or entity other than the Authority
- (5)    "Owner Participation Agreement" means an agreement entered into by an Owner with the Authority in accordance with the provisions of the Redevelopment Plan and these rules.
- (6)    "Project Area" means the area described in the "Legal Description of the Project Area Boundaries" (Attachment No. 1 of the Redevelopment Plan) and shown on the "Project Area Map" (Attachment No. 2 of the Redevelopment Plan).

(7) "Redevelopment Plan" means the Redevelopment Plan for the Treasure Island/Yerba Buena Island Redevelopment Project as adopted by the Board of Supervisors by Ordinance No. \_\_\_\_\_ on \_\_\_\_\_, 20 \_\_\_\_.

### III. [§300] ELIGIBILITY

Owners shall be eligible to participate in the redevelopment of property within the Project Area in accordance with the provisions of the Redevelopment Plan, these rules, and the limitations herein described.

Participation opportunities are necessarily subject to and limited by factors such as the following:

- (1) The appropriateness of land uses proposed and consistency with the General Plan of the City and County of San Francisco, as it may be amended from time to time;
- (2) The construction, widening, or realignment of streets;
- (3) The ability of participants to finance acquisition and development in accordance with the Redevelopment Plan and development criteria adopted by the Authority in implementation of the Redevelopment Plan;
- (4) The construction or expansion of public facilities.
- (5) The provisions of the Tidelands Trust and Conversion Act, if applicable.

The Authority presently contemplates that in carrying out the Redevelopment Plan, nearly all of Project Area will be acquired by the Authority via an Economic Development Conveyance from the U.S. Navy. The Authority will transfer portions of the property into private ownership via one or more Disposition and Development Agreements, and will retain portions of the property for public improvements, facilities, and utilities and for other uses and purposes in accordance with the Redevelopment Plan. Therefore, owner participation opportunities are limited to persons who are or may become owners of real property in the Project Area other than on a temporary or interim basis, subsequent to the initial disposition by TIDA of any land in the Project Area.

### IV. [§400] TYPES OF PARTICIPATION

Subject to these rules and the limitations in Section 300 and this Section 400, Owners shall be given a reasonable opportunity to participate in redevelopment by:

- (1) Retaining all or a portion of their properties and developing or improving such property for use in accordance with the Redevelopment Plan;
- (2) Acquiring adjacent or other properties within the Project Area and developing or improving such property for use in accordance with the Redevelopment Plan; or

(3) Selling their properties to the Authority and purchasing other properties in the Project Area.

The foregoing methods of providing owner participation opportunities shall not be deemed exclusive.

#### V. [§500] CONFORMING OWNERS

The Authority may, in its sole and absolute discretion, determine that certain real property within the Project Area meets the requirements of the Redevelopment Plan, and the Owners of such property will be permitted to remain as conforming Owners without an Owner Participation Agreement with the Authority, provided such Owners continue to operate, use, and maintain the real property within the requirements of the Redevelopment Plan.

In the event that any of the conforming Owners desire to (1) construct any additional improvements or substantially alter or modify existing structures on any of the real property described above as conforming, or (2) acquire additional property within the Project Area, then, in such event, such conforming Owners may be required by the Authority to enter into an Owner Participation Agreement with the Authority.

#### VI. [§600] OWNER PARTICIPATION AGREEMENTS

As explained above in Section 300, because there are no private owners of property in the Project Area at the time of adoption of the Redevelopment Plan, the Authority does not initially contemplate entering into Owner Participation Agreements. An Owner wishing to participate in redevelopment within the Project Area may be required, as a condition to participation, to enter into an Owner Participation Agreement with the Authority if the Authority determines it is necessary to impose upon the property any of the standards, restrictions, and controls of the Redevelopment Plan. The Agreement may require the participant to join in the recordation of such documents as the Authority may require in order to ensure the property will be developed and used in accordance with the Redevelopment Plan and the Owner Participation Agreement.

#### VII. [§700] CONTENTS OF OWNER PARTICIPATION AGREEMENTS

An Owner Participation Agreement shall obligate the Owner, his or her heirs, successors and assigns, and tenants to devote the property to the uses specified in the Redevelopment Plan, abide by all provisions and conditions of the Redevelopment Plan for the period of time that the Redevelopment Plan is in force and effect, and comply with all the provisions of the Owner Participation Agreement according to their terms, duration, and effect.

An Owner Participation Agreement may provide that if the Owner does not comply with the terms of the Agreement, the Authority, in addition to other remedies, may acquire such property or any interest therein by any lawful means for its fair market value as of the date of the Owner Participation Agreement, and the Authority may thereafter dispose of the property or interest so acquired in accordance with the Redevelopment Plan.

An Owner Participation Agreement shall contain such other terms and conditions which, in the discretion of the Authority, may be necessary to effectuate the purposes of the Redevelopment Plan.

VIII. [§800] PREFERENCE TO BUSINESS OCCUPANTS WITHIN THE PROJECT AREA

Business Occupants who desire to remain within the Project Area shall be extended a reasonable preference to remain or reenter in business within the Project Area if they otherwise meet the requirements prescribed in these rules and the Redevelopment Plan, provided said Business Occupants are able to demonstrate the financial ability to remain or reenter in business within the Project Area.

IX. [§900] AMENDMENT OF RULES

These rules may be modified or amended from time to time by the Authority at any regular or duly called special meeting, provided, however, that no such amendment shall retroactively impair the rights of Owners who have executed Owner Participation Agreements with the Authority in reliance upon these rules as presently constituted.







1 [Relocation Guidelines]

2 **RESOLUTION CONDITIONALLY ADOPTING THE DEPARTMENT OF HOUSING**  
3 **AND COMMUNITY DEVELOPMENT TITLE 25 RELOCATION ASSISTANCE AND**  
4 **REAL PROPERTY ACQUISITION GUIDELINES, WITH CERTAIN MODIFICATIONS.**

5 WHEREAS, Former Naval Station Treasure Island is a military base located on  
6 Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by  
7 the United States of America (the "Navy"); and,

8 WHEREAS, The Base was selected for closure and disposition by the Base  
9 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its  
10 subsequent amendments; and,

11 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,  
12 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit  
13 corporation known as the Treasure Island Development Authority (the "Authority") to act as a  
14 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and  
15 conversion of the Base for the public interest, convenience, welfare and common benefit of  
16 the inhabitants of the City and County of San Francisco; and,

17 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended  
18 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter  
19 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority  
20 as a redevelopment agency under the California Community Redevelopment Law (Sections  
21 33000 et seq. of the Health and Safety Code) ("CRL") with authority over the Base upon  
22 approval of the City's Board of Supervisors, and (ii) with respect to those portions of the Base  
23 which are subject to Tidelands Trust, vested in the Authority the authority to administer the  
24 public trust for commerce, navigation and fisheries as to such property; and,

1 WHEREAS, The Board of Supervisors approved the designation of the Authority as the  
2 redevelopment agency for Treasure Island in 1998; and,

3 WHEREAS, The Authority has prepared a proposed Redevelopment Plan  
4 ("Redevelopment Plan") for the Treasure Island/Yerba Buena Island Redevelopment Project  
5 ("Project Area"); and,

6 WHEREAS, The implementation of the proposed Redevelopment Plan is not expected  
7 to result in the displacement of any persons that would trigger relocation under Section  
8 7260(c) of the California Relocation Assistance Act of 1970 (California Government Code  
9 Section 7260 et seq.) ("California Relocation Act") and its implementing regulations \; and,

10 WHEREAS, Despite the fact that implementation of the proposed Redevelopment Plan  
11 is not expected to cause any existing occupants of the Project Area to be "displaced persons"  
12 under the California Relocation Act, by Resolution adopted on December 12, 2006, the Board  
13 of Supervisors of the City and County of San Francisco ("Board of Supervisors")  
14 recommended as a matter of policy that the Authority provide all existing households in the  
15 Project Area with certain benefits including the opportunity to move to alternate housing within  
16 the Project Area on the terms and conditions set forth in the Transition Housing Rules and  
17 Regulations ("Transition Housing Rules and Regulations") that are proposed to be adopted in  
18 conjunction with the proposed Disposition and Development Agreement between the Authority  
19 and Treasure Island Community Development, LLC, for the Project Area; and,

20 WHEREAS, While no existing occupants of the Project Area are expected to be  
21 "displaced persons" as said term is defined in Section 7260(c) of the California Relocation Act,  
22 the Authority has nonetheless established a method and plan for relocation in the event that,  
23 over the course of implementation of the Redevelopment Plan, there are "displaced persons"  
24 in the Project Area, and such method and plan is included in the report to the Board of  
25

Supervisors on the proposed Redevelopment Plan as required by Section 33352(f) of the CRL; and,

WHEREAS, Government Code Section 7267.8 requires an agency to adopt rules and regulations in accordance with the Relocation Assistance and Real Property Acquisition Guidelines set forth in the California Code of Regulations, Title 25, Chapter 6, Subchapter 1 (Section 6000 et seq.), as they may be amended from time to time (the "Title 25 State Guidelines"), to administer relocation assistance under the California Relocation Act; and,

WHEREAS, In order to comply with Government Code Section 7267.8, the Authority wishes to adopt the Title 25 State Guidelines with certain modifications that are warranted by the unique circumstances of the Project Area and the desirability of having a uniform procedure to address issues arising out of the Transition Housing Rules and Regulations and/or the California Relocation Act; now, therefore, be it

RESOLVED, That the Board of Directors of the Authority, in its role as the redevelopment agency for the Treasure Island/Yerba Buena Island Redevelopment Project, does hereby approve and adopt by reference the Title 25 State Guidelines, excluding any sections regarding the procedures or requirements for handling grievances of displaced persons; and, be it

FURTHER RESOLVED, That due to the unique circumstances of the Project Area and the desirability of having a uniform procedure to resolve issues arising from the Transition Housing Rules and Regulations and the California Relocation Act, any grievances of displaced persons under the California Relocation Act shall be resolved in the manner set forth in the Transition Housing Rules and Regulations and any relocation appeals shall be heard by the applicable designated appeals/advisory board, also as set forth in the Transition Housing Rules and Regulations; and, be it

1 FURTHER RESOLVED, That adoption of the Title 25 State Guidelines is conditioned  
2 upon the adoption of the Redevelopment Plan by the Board of Supervisors; and be it

3 FURTHER RESOLVED, That in the event the Board of Supervisors fails to take the  
4 above action, this approval shall be deemed moot and the adoption of the Title 25 State  
5 Guidelines, as modified as described above, shall be of no force or effect; and, be it

6 FURTHER RESOLVED, That the Board of Directors hereby authorizes the  
7 Redevelopment Project Director to enter into any additions, amendments or other  
8 modifications to the Title 25 State Guidelines applicable to the Treasure Island/Yerba Buena  
9 Island Redevelopment Project that the Redevelopment Project Director determines in  
10 consultation with the City Attorney are in the best interests of the Authority, that do not  
11 materially increase the obligations or liabilities of the Authority, that do not materially reduce  
12 the rights of the Authority, and are necessary or advisable to complete the preparation and  
13 approval of the Title 25 State Guidelines applicable to the Treasure Island/Yerba Buena Island  
14 Redevelopment Project, such determination to be conclusively evidenced by the execution  
15 and delivery by the Redevelopment Project Director of the documents and any amendments  
16 thereto  
17  
18

#### 19 CERTIFICATE OF SECRETARY

20 I hereby certify that I am the duly elected Secretary of the Treasure Island  
21 Development Authority, a California nonprofit public benefit corporation, and that the  
22 above Resolution was duly adopted and approved by the Board of Directors of the  
23 Authority at a properly noticed meeting on February 23, 2011.  
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Jean-Paul Samaha, Secretary

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1 of 81 DOCUMENTS

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\* THIS DOCUMENT IS CURRENT THROUGH REGISTER 2011, NO. 2, JANUARY 14, 2011 \*

TITLE 25. HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION 1. HOUSING AND COMMUNITY DEVELOPMENT  
CHAPTER 6. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT PROGRAMS  
SUBCHAPTER 1. RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION GUIDELINES  
ARTICLE 1. GENERAL

25 CCR 6000 (2011)

## § 6000. Order of Adoption

This subchapter (hereinafter referred to as the "Guidelines") is adopted pursuant to the provisions of Section 41135, Health and Safety Code, in order to implement, interpret and to make specific provisions of Division 7, commencing with *Section 7260 of the Government Code* (hereinafter referred to as the "Act"), relating to relocation assistance, last resort housing and real property acquisition.

## AUTHORITY:

Note: Authority cited for Chapter 6: Sections 41134, 41135, and 41226, Health and Safety Code. Reference: *Section 7260 et seq., Government Code*; 41134, 41135, and 41226, Health and Safety Code.

## HISTORY:

1. Amendment filed 11-5-76 as an emergency; designated effective 11-27-76 (Register 76, No. 44). For prior history, see Register 76, No. 44.
2. Redesignation of Chapter 6 (Sections 6000-6198, not consecutive) to Chapter 6, Subchapter 1 (Sections 6000-6198, not consecutive) filed 1-28-77 as procedural and organizational; effective upon filing (Register 77 No. 5).
3. Amendment filed 1-28-77 as procedural and organizational; effective upon filing (Register 77, No. 5).
4. Certificate of Compliance as to filing of 11-5-76 filed 2-16-77 (Register 77, No. 8).

## ARTICLE 1. GENERAL

25 CCR 6002 (2011)

## § 6002. Statement of Purpose and Policy

(a) The purpose of the Guidelines is to assist public entities in the development of regulations and procedures implementing the Act.

(b) The Guidelines are designed to carry out the following policies of the Act:

(1) To ensure that uniform, fair and equitable treatment is afforded persons displaced from their homes, businesses or farms as a result of the actions of a public entity in order that such persons shall not suffer disproportionate injury as a result of action taken for the benefit of the public as a whole; and



(2) In the acquisition of real property by a public entity, to ensure consistent and fair treatment for owners of real property to be acquired, to encourage and expedite acquisition by agreement with owners of such property in order to avoid litigation and relieve congestion in courts, and to promote confidence in public land acquisition.

(c) A public entity shall not participate in or undertake a project that will displace individuals from their homes unless comparable replacement dwellings (see subsection 6008(c)) will be available within a reasonable period of time prior to displacement.

(d) The Guidelines are intended to establish only minimum requirements for relocation assistance and payments. They shall not be construed to limit any other authority or obligation which a public entity may have to provide additional assistance and payments.

(e) The Act and the Guidelines are intended for the benefit of displaced persons, to ensure that such persons receive fair and equitable treatment and do not suffer disproportionate injuries as the result of programs designed for the benefit of the public as a whole. The Act, Guidelines and all applicable regulations on which determinations are based shall be construed to effect this intent.

#### § 6004. Applicability and Supersedure

(a) Except as otherwise noted in this section, the Guidelines are applicable to all displacement and acquisition occurring on or after their effective date, January 1, 1977.

(b) These Guidelines supersede those adopted by the Commission of Housing and Community Development on October 17, 1973. The guidelines so superseded shall not apply to any displacement or acquisition occurring on or after the effective date of these Guidelines. Any such displacement or acquisition shall be governed solely by these Guidelines and the California Relocation Act, found at *Government Code section 7260 et seq.*

The provisions of these Guidelines, however, shall not be construed retroactively to apply to action(s) undertaken by a public entity prior to their effective date where the purpose of the action was to fulfill obligations imposed by the Act and the action is in compliance with the requirements of the Act and the existing Guidelines. For the purpose of this section the term "action" shall include but is not limited to: the provision of information, notice, other assistance, comparable replacement housing, payments and other benefits; the preparation of relocation and last resort housing plans, including the survey and analysis of needs and resources; the processing of grievances; and the various steps taken in connection with the acquisition of property for public use.

These guidelines shall apply to relocation plans and notices to displacees subsequent to the effective date of any regulatory provision. The right of displacees shall not be reduced in reliance on any amendment to these guidelines where it may be demonstrated that the displacee has acted in reliance on a notice given to that household prior to the effective date of any guideline.

(c) To the extent that these Guidelines are from time to time amended, the amendments shall be effective prospectively from the date that they become effective.

#### AUTHORITY:

Note: Authority cited: *Section 50460, Health and Safety Code*. Reference: *Article 4, Section 8, California Constitution*.

#### HISTORY:

1. Amendment of subsection (b) filed 11-5-76 as an emergency; designated effective 11-27-76 (Register 76, No. 44).
2. Certificate of Compliance filed 2-16-77 (Register 77, No. 8).
3. Amendment of section and new Note filed 8-12-97; operative 9-11-97 (Register 97, No. 33).

#### § 6006. Regulations

(a) Each public entity before undertaking or participating in activity which will result in the displacement of persons shall adopt rules and regulations that implement the requirements of the Act, are in accordance with the provisions of

the Guidelines, and prescribe additional procedures and requirements that are appropriate to the particular activities of the public entity and not inconsistent with the Act or Guidelines.

(b) Rules and regulations issued under this section shall be promptly revised as necessary, to conform to any amendment of the Act or Guidelines.

#### § 6008. Definitions

The following terms shall mean:

(a) Acquisition.

Obtaining ownership or possession of property by lawful means.

(b) Business.

Any lawful activity, except a farm operation provided such lawful activity is not in an unlawful occupancy as defined in subsection (v), conducted primarily:

- (1) For the purchase, sale, lease, or rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;
- (2) For the sale of services to the public;
- (3) By a nonprofit organization; or
- (4) Solely for the purpose of a moving expense payment (see section 6090), for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display, whether or not such display is located on the premises on which any of the above activities are conducted.

(c) Comparable Replacement Dwelling.

A dwelling which satisfies each of the following standards:

- (1) Decent, safe and sanitary (as defined in subsection 6008(d)), and comparable to the acquired dwelling with respect to number of rooms, habitable living space and type and quality of construction, but not lesser in rooms or living space than necessary to accommodate the displaced person.
- (2) In an area not subjected to unreasonable adverse environmental conditions from either natural or manmade sources, and not generally less desirable than the acquired dwelling with respect to public utilities, public and commercial facilities and neighborhood conditions, including schools and municipal services, and reasonably accessible to the displaced person's present or potential place of employment; provided that a potential place of employment may not be used to satisfy the accessibility requirement if the displaced person objects.

The Act and Guidelines do not require that the replacement dwelling be generally as desirable as the acquired dwelling with respect to environmental characteristics. Though a displaced person does not have to accept a dwelling subject to unreasonable adverse environmental conditions, neither is a public entity required to duplicate environmental characteristics, such as scenic vistas or proximity to the ocean, lakes, rivers, forests or other natural phenomena.

If the displaced person so wishes, every reasonable effort shall be made to relocate such person within or near to his existing neighborhood. Whenever practicable the replacement dwelling shall be reasonably close to relatives, friends, services or organizations with whom there is an existing dependency relationship.

(3) Available on the private market to the displaced person and available to all persons regardless of race, color, sex, marital status, religion, or national origin in a manner consistent with Title VIII of the Civil Rights Act of 1968 or any other applicable state or federal anti-discrimination law.

(4) To the extent practicable and where consistent with paragraph (c)(1) of this section, functionally equivalent and substantially the same as the acquired dwelling, but not excluding newly constructed housing.

(5)(A) Within the financial means of the displaced person. A replacement dwelling is within the financial means of a displaced person if the monthly rental cost (including utilities and other reasonable recurring expenses) minus any

replacement housing payment available to the person (as provided in section 6104) does not exceed thirty percent (30%) of the person's average monthly income (as defined in subsection 6008(1)).

(B) For homeowners; a replacement dwelling is within the financial means of a displaced person if the purchase price of the dwelling including related increased interest costs and other reasonable expenses including closing costs (as described in section 6102) does not exceed the total of the amount of just compensation provided for the dwelling acquired and the replacement housing payment available to the person (as provided in section 6102).

If a dwelling which satisfies these standards is not available the public entity may consider a dwelling which exceeds them.

(d) Decent, Safe and Sanitary.

(1) Housing in sound, clean and weather tight condition, in good repair and adequately maintained, in conformance with the applicable state and local building, plumbing, electrical, housing and occupancy codes or similar ordinances or regulations and which meets the following minimum standards:

(A) Each housekeeping unit shall include a kitchen with a fully usable sink, a stove or connection for a stove, a separate and complete bathroom, hot and cold running water in both bathroom and kitchen, an adequate and safe wiring system for lighting and other electrical services and heating as required by climatic conditions and local codes.

(B) Each nonhousekeeping unit shall be in conformance with state and local code standards for boarding houses, hotels and other dwellings for congregate living.

(2) When the term decent, safe and sanitary is interpreted, under local, state or federal law, as establishing a higher standard, the elements of that higher standard, which exceed the provision of paragraph (1) of this subsection, are incorporated herein. A unit which is occupied by no more than the maximum number of people allowed under the State Building Code shall be considered to be in compliance with the occupancy provisions of this subsection.

(e) Department. Department of Housing and Community Development.

(f) Displaced Person. Any person who moves from real property, or who moves his personal property from real property, either:

(1) As a result of a written notice of intent to acquire by a public entity or as a result of the acquisition of such real property, in whole or in part, by a public entity or by any person having an agreement with or acting on behalf of a public entity, or as the result of a written order from a public entity to vacate the real property, for public use; or

(2) As a result of the rehabilitation, demolition or other displacing activity undertaken by a public entity or by any person having an agreement with or acting on behalf of a public entity of real property on which the person is in lawful occupancy or conducts a business, and the displacement, except as provided in *Government Code section 7262.5*, lasts longer than 90 days.

This definition shall be construed so that persons displaced as a result of public action receive relocation benefits in cases where they are displaced as a result of an owner participation agreement or an acquisition carried out by a private person for or in connection with a public use where the public entity is otherwise empowered to acquire the property to carry out the public use.

(3) Except persons or families of low and moderate income, as defined in *Section 50093 of the Health and Safety Code*, who are occupants of housing which was made available to them on a permanent basis by a public agency and who are required to move from that housing, a displaced person shall not include any of the following:

(A) Any person who has been determined to be in unlawful occupancy of the displacement property as defined in subsection 6008(v).

(B) Any person who is a post-acquisition occupant of the displacement dwelling, as provided in section 6034(b);

(C) Any person who occupied the property for the purpose of obtaining relocation benefits and assistance;

(D) Any person who is an occupant of a "Qualified affordable housing preservation project" and all requirements of *Government Code section 7262.5* are met; or

(E) Any person occupying private property (not otherwise entitled to relocation benefits as a result of an acquisition, rehabilitation or demolition program) who is required to move as a result of the displacing agency's routine en-

enforcement of building, housing or health codes unless the code enforcement is undertaken for the purpose of causing displacement in coordination with an identified rehabilitation, construction, or demolition program or project.

(F) A person who is not required to move permanently or temporarily as a result of the project as long as they are notified they are not required to move and the project does not impose an unreasonable change in the character or use of the property.

(G) An owner-occupant who moves as a result of an acquisition meeting the requirements of *Government Code* section 7277.

(g) Dwelling. The place of permanent or customary and usual abode of a person, including a single-family dwelling, a single-family unit in a two-family dwelling, multi-family or multipurpose dwelling, a unit of a condominium or cooperative housing project, a nonhousekeeping unit, a mobilehome, a recreational vehicle as described in *Health and Safety Code Section 18010*, or any other residential unit which either is considered to be real property under State law or cannot be moved without substantial damage or unreasonable cost. A residence need not be decent, safe and sanitary to be a dwelling.

A second home shall be considered to be a dwelling only for the purpose of establishing eligibility for payment for moving and related expenses (as provided in section 6090).

(h) Economic Rent. The amount of rent a tenant or homeowner would have to pay for a dwelling similar to the acquired dwelling in a comparable area.

(i) Elderly Household. A household in which the head of household or spouse is 62 years or older.

(j) Family. Two or more individuals who by blood, marriage, adoption, or mutual consent live together as a family unit.

(k) Farm Operation. Any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(l) Gross Income. Gross income means the total annual income of an individual, or where a family is displaced total annual income of the parents or adult heads of household, less the following:

(1) A deduction of \$ 500 for each dependent in excess of three.

(2) A deduction of ten percent (10%) of total income for an elderly or handicapped household.

(3) A deduction for recurring, extraordinary medical expenses, defined for this purpose to mean medical expenses in excess of three percent of total income, where not compensated for or covered by insurance or other sources, such as public assistance or tort recovery.

(4) A deduction of reasonable amounts paid for the care of children or sick or incapacitated family members when determined to be necessary to employment of the head or spouse, except that the amount deducted shall not exceed the amount of income received by the person thus released.

Gross income is divided by twelve to ascertain the average monthly income. Relocation and property acquisition payments are not to be considered as income for the determination of financial means.

(m) Handicapped Household. A household in which any member is handicapped or disabled.

(n) Initiation of Negotiations. The initial written offer made by the acquiring entity to the owner of real property to be purchased, or the owner's representative.

(o) Manufactured Home or Mobilehome. A structure described in *Health and Safety Code* sections 18007 and 18008.

(p) Mortgage. Such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, together with the credit instruments, if any, secured thereby.

(q) Ownership. Holding any of the following interests in a dwelling, or a contract to purchase one of the first six interests:

(1) A fee title.

- (2) A life estate.
- (3) A 50-year lease.
- (4) A lease with at least 20 years to run from the date of acquisition of the property.
- (5) A proprietary interest in a cooperative housing project which includes the right to occupy a dwelling.
- (6) A proprietary interest in a mobilehome.
- (7) A leasehold interest with an option to purchase.

In the case of one who has succeeded to any of the foregoing interests by devise, bequest, inheritance or operation of law, the tenure of ownership, but not occupancy, of the succeeding owner shall include the tenure of the preceding owner.

(r) Person. Any individual, family, partnership, corporation, limited liability corporation or association.

(s) Public Entity. Includes the state, the Regents of the University of California, a county, city, city and county, district, public authority, public agency, and any other political subdivision or public corporation in the state when acquiring real property, or any interest therein, or ordering that acquired property be vacated, in any city or county for public use.

(t) Public Use. A use for which property may be acquired by eminent domain.

(u) Tenant. A person who rents or is otherwise in lawful possession of a dwelling, including a sleeping room, which is owned by another.

(v) Unlawful Occupancy. A person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction or if the person's tenancy has been lawfully terminated by the owner for cause, the tenant has vacated the premises, and the termination was not undertaken for the purpose of evading relocation assistance obligations.

.....

For those who, pursuant to the criteria set forth in *Government Code* section 7260(i)(3)(A) through (J), would have qualified as a "displaced person" prior to January 1, 1998, the applicable figure shall be twenty-five percent (25%) of the person's average monthly income.

#### AUTHORITY:

Note: Authority cited: *Section 50460, Health and Safety Code*. Reference: Sections 7260(b), (c)(2)(A), (I)(1) and 7277, *Government Code*; *Section 17000, Corporations Code*; and *Sections 18007, 18008, 18010 and 50093, Health and Safety Code*.

#### HISTORY:

1. Amendment of section and new Note filed 8-12-97; operative 9-11-97 (Register 97, No. 33).
2. Redesignation and amendment of former subsection (c)(5) as subsections (c)(5)(A)-(B) and amendment of subsections (f)(2) and (f)(3)(D) filed 10-7-99; operative 11-6-99 (Register 99, No. 41).

#### § 6010. Prior Determinations

(a) Displacement. No public entity may proceed with any phase of a project or other activity which will result in the displacement of any person, business or farm until it makes the following determinations:

(1) Fair and reasonable relocation payments will be provided to eligible persons as required by Article 3 of the Guidelines.



(2) A relocation assistance program offering the services described in Article 2 of the Guidelines will be established.

(3) Eligible persons will be adequately informed of the assistance, benefits, policies, practices and procedures, including grievance procedures, provided for in these Guidelines.

(4) Based upon recent survey and analysis of both the housing needs of persons who will be displaced and available replacement housing and considering competing demands for that housing, comparable replacement dwellings will be available, or provided, if necessary, within a reasonable period of time prior to displacement sufficient in number, size and cost for the eligible persons who require them.

(5) Adequate provisions have been made to provide orderly, timely, and efficient relocation of eligible persons to comparable replacement housing available without regard to race, color, religion, sex, marital status, or national origin with minimum hardship to those affected.

(6) A relocation plan meeting the requirements of section 6038 has been prepared.

(b) Acquisition. No public entity may proceed with any phase of a project or any other activity which will result in the acquisition of real property until it determines that with respect to such acquisition and to the greatest extent practicable,

(1) Adequate provisions have been made to be guided by the provisions of Article 6 of the Guidelines, and

(2) Eligible persons will be informed of the pertinent benefits, policies and requirements of the Guidelines.

#### HISTORY:

1. Amendment of subsection (b) filed 11-5-76 as an emergency; designated effective 11-27-76 (Register 76, No. 44).

2. Certificate of Compliance filed 2-16-77 (Register 77, No. 8).

#### § 6012. Citizen Participation

(a) All persons who will be displaced, neighborhood groups and any relocation committee shall be given an opportunity and should be encouraged fully and meaningfully to participate in reviewing the relocation plan and monitoring the relocation assistance program.

(b) When a substantial number of persons will be displaced from their dwellings the public entity shall encourage the residents and community organizations in the displacement area to form a relocation committee. The committee shall include, when applicable, residential owner occupants, residential tenants, business people, and members of existing organizations within the area. In lieu of initiating a new process of citizen participation, public entities which have conducted or are conducting a citizen participation process as part of an existing development program may substitute such process if it satisfies the requirements of this section.

If a substantial number of persons will not be displaced from their dwellings, the public entity shall at least consult with and obtain the advice of residents and community organizations and make the relocation plan available to such persons and organizations prior to submitting it to the legislative body for approval. (See section 6038.)

(c) At a minimum the displacing entity shall guarantee the following:

(1) Timely and full access to all documents relevant to the relocation program. A public entity may reasonably restrict access to material where its confidentiality is protected by law or its disclosure is prohibited by law.

The displacing entity shall ensure that the information in documents the provision of which would result in disclosure of the identity of eligible persons is provided in a manner designed to avoid such disclosure. This obligation to avoid improper disclosure shall not affect the right of the person to which the information relates (or any other person authorized in writing by such person) to inspect such documents.

(2) The provision of technical assistance necessary to interpret elements of the relocation plan and other pertinent materials.

(3) The right to submit written or oral comments and objections, including the right to submit written comments on the relocation plan and to have these comments attached to the plan when it is forwarded to the local legislative body or the head of the state agency for approval.

(4) Prompt, written response to any written objections or criticisms.

#### § 6014. Prerequisite to Displacement

No person shall be displaced until the public entity has fulfilled the obligations imposed by the Act and Guidelines.



9 of 81 DOCUMENTS

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#### TITLE 25. HOUSING AND COMMUNITY DEVELOPMENT

#### DIVISION 1. HOUSING AND COMMUNITY DEVELOPMENT

#### CHAPTER 6. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT PROGRAMS

#### SUBCHAPTER 1. RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION GUIDELINES

#### ARTICLE 1. GENERAL

25 CCR 6016 (2011)

#### § 6016. Remedies

(a) If the public entity has not fulfilled or is not substantially fulfilling its relocation responsibilities, it shall cease displacement until such time as its responsibilities are fulfilled. When appropriate project implementation shall be suspended or terminated.

(b) Eligible persons who move without offers of assistance and benefits, after the public entity was required to offer assistance or benefits, shall be provided such assistance and payments and, when appropriate, compensation for additional costs incurred. The displacing entity shall make every effort to identify and locate such persons.

(c) A public entity may pay a complainant's attorney's fees and costs and is encouraged to consider doing so when a complainant institutes a successful administrative appeal or judicial action.

(d) The enumeration of remedies in this section is not intended to discourage or preclude the use of other remedies consistent with the intent of the Act and Guidelines. Rather a public entity is encouraged to consider and adopt other remedies.

#### § 6018. Priority of Federal Law

If a public entity undertakes a project with federal financial assistance and consequently must provide relocation assistance and benefits as required by federal law, the provisions of the Act and Guidelines shall not apply; but if an obligation to provide relocation assistance and benefits is not imposed by federal law the provisions of the Act and Guidelines shall apply.

#### § 6020. Severability



If any provision of the Guidelines or the application thereof is held invalid, such invalidity shall not affect other provisions or applications of the Guidelines which can be given effect without the invalid provision or application, and to this end the provisions of the Guidelines are severable.

§ 6030. Purpose

The purpose of this part is to set forth requirements with respect to the development and implementation of a relocation assistance advisory program for the provision of specified services and to prescribe the obligation of a public entity not to displace or cause the displacement of any person from his dwelling without adequate notice and unless comparable replacement housing is available.

§ 6032. Relocation Assistance Advisory Program

Public entities shall develop and implement a relocation assistance advisory program which satisfies the requirements of this article and of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, the Unruh Civil Rights Act, the Rumford Act and applicable state and federal anti-discrimination laws. Such program shall be administered so as to provide advisory services which offer maximum assistance to minimize the hardship of displacement and to ensure that (a) all persons displaced from their dwellings are relocated into housing meeting the criteria for comparable replacement housing, and (b) all persons displaced from their places of business or farm operations are assisted in reestablishing with a minimum of delay and loss of earnings.

AUTHORITY:

Note: Authority cited: *Section 50460, Health and Safety Code*. Reference: *Section 7261, Government Code*.

HISTORY:

1. Amendment of section and new Note filed 8-12-97; operative 9-11-97 (Register 97, No. 33).

§ 6034. Eligibility

(a) Relocation assistance and benefits shall be available to:

- (1) Any person who occupies property from which he will be displaced.
- (2) Any person who will move from real property or will move his personal property from real property, because he will be displaced from other real property on which he conducts a business or farm operation.
- (3) Any person who moves from real property as a result of its acquisition by a public entity whether the move is voluntary or involuntary.
- (4) Any person who, following the initiation of negotiations by a public entity, moves as the result of the pending acquisition.
- (5) Any person who moves as the result of pending acquisition, rehabilitation or demolition by a public entity either following receipt of a Notice of Intent to Displace (see section 6086) or as a result of inducement or encouragement by the public entity.

(b)(1) Post-acquisition tenants, those who lawfully occupy property only after a public entity acquires it, or who lawfully occupy property after the private acquisition of property by a person with a written agreement with a public entity for the purpose of financing the purchase or development of the property, are not eligible for assistance and benefits other than advisory assistance to the extent determined by the displacing agency.

A public entity shall inform post-acquisition tenants regarding the projected date of displacement and, periodically, should inform post-acquisition tenants of any changes in this projection.

(2) When the displacement of a post-acquisition tenant causes a hardship for that person because of a critical housing shortage, age, handicap, infirmity, lack of financial means or other circumstance, the displacing entity shall provide relocation advisory assistance and, may in its discretion, provide other financial relocation benefits. In such hardship situations a public entity is encouraged to provide advisory assistance and payment for moving expenses.

(3) Where a public entity, or property it owns, is making housing available on a permanent basis, a post-acquisition tenant who moves as the result of a written order from the public entity to vacate is eligible for relocation assistance and benefits if the order to vacate is related to a plan to demolish, rehabilitate or change the use of such units.

#### AUTHORITY:

Note: Authority cited: *Section 50460, Health and Safety Code*. Reference: *Section 7260(c), Government Code*.

#### HISTORY:

1. Amendment of section and new Note filed 8-12-97; operative 9-11-97 (Register 97, No. 33).

#### § 6036. Rehabilitation and Demolition

If a public entity undertakes a rehabilitation or demolition program and as a result a person or business is displaced from privately owned property, the public entity shall provide assistance and benefits. If a person or business is displaced by such an undertaking from property acquired by a public entity, the public entity shall provide assistance and benefits.

#### AUTHORITY:

Note: Authority cited: *Section 50460, Health and Safety Code*. Reference: *Section 7260(c), Government Code*.

#### HISTORY:

1. Amendment of section heading and section and new Note filed 8-12-97; operative 9-11-97 (Register 97, No. 33).

#### § 6038. Relocation Plan

(a) As soon as possible following the initiation of negotiations and prior to proceeding with any phase of a project or other activity that will result in displacement a public entity shall prepare a Relocation Plan and submit it for approval to the local legislative body, or in the case of a state agency, the head of the agency. When the public entity's action will only result in an insignificant amount of non-residential displacement a displacing entity shall provide benefits as required by these Guidelines and state Relocation Law without compliance with this section. For residential projects of 15 or less households, the full and accurate completion of the Model Relocation Plan HCD-832(new), which is incorporated by reference as if set forth in full, shall be presumed to be in compliance with the planning requirements of this section. Copies of the Model Relocation Plan HCD-832(6/8/99) as well as the Informational Notice HCD-833(6/8/99), which is incorporated by reference as if set forth in full, may be downloaded from the Department's internet web site at [www.hcd.ca.gov](http://www.hcd.ca.gov). This form can be obtained from the Department by telephoning 916-323-7288.

(b) A Relocation Plan shall include the following:

- (1) A diagrammatic sketch of the project area.
- (2) Projected dates of displacement.
- (3) A written analysis of the aggregate relocation needs of all persons to be displaced (as required by section 6048) and a detailed explanation as to how these needs are to be met.
- (4) A written analysis of relocation housing resources (as required by section 6052).
- (5) A detailed description of the relocation advisory services program, including specific procedures for locating and referring eligible persons to comparable replacement housing.

- (6) A description of the relocation payments to be made (pursuant to Article 3) and a plan for disbursement.
- (7) A cost estimate for carrying out the plan and identification of the source of the necessary funds.
- (8) A detailed plan by which any last resort housing (as described in section 6054 and Article 4) is to be built and financed.
- (9) A standard information statement to be sent to all renters who will be permanently displaced (as required by section 6046).
- (10) Temporary relocation plans, if any.
- (11) A description of relocation office operation procedures.
- (12) Plans for citizen participation.
- (13) An enumeration of the coordination activities undertaken (pursuant to section 6052).
- (14) The comments of the relocation committee, if any (pursuant to section 6012).
- (15) A written determination by the public entity that the necessary resources will be available as required.
- (c) A Plan prepared by a local public entity shall be consistent with the local housing element.
- (d) In the event of delay of more than one year in the implementation of the relocation program, the plan shall be updated prior to implementation of that program.

(e)(1) Copies of the plan shall be submitted for review to the relocation committee 30 days prior to submission to the local legislative body or head of state agency for approval. Copies shall be available to the public upon request. A copy of the final relocation plan shall be forwarded to the department which shall act as a central repository.

(2) General notice of the plan shall be provided. Notice shall be designed to reach the occupants of the property; it shall be in accordance with the provisions of paragraph 6046(a)(3) and subsection 6046(b); and it shall be provided 30 days prior to submission to the local legislative body or head of state agency for approval.

(f) Any displaced person or interested organization may petition the department to review the relocation plan required to be submitted by the displacing agency. The department shall review the plan in accordance with the time constraints and the procedures established in Article 5.

#### AUTHORITY:

Note: Authority cited: *Section 50460, Health and Safety Code*. Reference: *Sections 7260.5 and 7261, Government Code*.

#### HISTORY:

- 1. Amendment of subsection (c) filed 1-28-77 as procedural and organizational; effective upon filing (Register 77, No. 5).
- 2. Amendment of subsections (a) and (c)-(e)(1), new subsection (f) and new Note filed 8-12-97; operative 9-11-97 (Register 97, No. 33).
- 3. Amendment of subsections (a), (b)(9) and (c)(1) filed 10-7-99; operative 11-6-99 (Register 99, No. 41).

#### § 6040. Minimum Requirements of Relocation Assistance Advisory Program

(a) Each relocation assistance advisory program undertaken pursuant to this Article shall include, at a minimum, such measures, facilities or services as may be necessary or appropriate in order to:

- (1) Fully inform eligible persons under this Article within 60 days following the initiation of negotiations but not later than the close of escrow on the property, for a parcel as to the availability of relocation benefits and assistance and

the eligibility requirements therefor, as well as the procedures for obtaining such benefits and assistance, in accordance with the requirements of section 6046. For projects by private parties with an agreement with a public entity, the "initiation of negotiations" shall be the later of the date of acquisition or the date of the written agreement between the private entity and the public entity for purposes of acquiring or developing the property for the project.

(2) Determine the extent of the need of each such eligible person for relocation assistance in accordance with the requirements of section 6048.

(3) Assure eligible persons that within a reasonable period of time prior to displacement there will be available comparable replacement housing, meeting the criteria described in section 6008(c), sufficient in number and kind for and available to such eligible persons.

(4) Provide current and continuing information on the availability, prices, and rentals of comparable sales and rental housing, and of comparable commercial properties and locations, and as to security deposits, closing costs, typical down payments, interest rates, and terms for residential property in the area.

(5) Assist each eligible person to complete applications for payments and benefits.

(6) Assist each eligible, displaced person to obtain and move to a comparable replacement dwelling.

Only adequate inspection will insure that a particular unit meets this standard. If a displaced person occupies a unit to which he is referred by the public entity and the unit does not satisfy the comparable replacement dwelling standard, the public entity has not fulfilled its obligation to assist the displaced person to obtain such a dwelling. Whenever this occurs the public entity shall offer to locate such a dwelling for the displaced person and to pay again all moving and related expenses. If the displaced person chooses not to move from the unit that he occupied following referral, the public entity shall not assert that he is ineligible to receive relocation assistance and benefits on the basis of that unit's failure to satisfy the comparable replacement dwelling standard.

(7) Assist each eligible person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location.

(8) Provide any services required to insure that the relocation process does not result in different or separate treatment on account of race, color, religion, national origin, sex, marital status, familial status, or any basis protected by state or federal anti-discrimination laws, or any other arbitrary circumstances.

(9) Supply to such eligible persons information concerning federal and state housing programs, disaster loan and other programs administered by the Small Business Administration, and other federal or state programs, offering assistance to displaced persons.

(10) Provide other advisory assistance to eligible persons in order to minimize their hardships. It is recommended that, as needed, such assistance include counseling and referrals with regard to housing, financing, employment, training, health and welfare, as well as other assistance.

(11) Inform all persons who are expected to be displaced about the eviction policies to be pursued in carrying out the project, which policies shall be in accordance with the provisions of section 5058.

(b) Relocation Office.

When a substantial number of persons will be displaced and the relocation staff's office is not easily accessible to those persons, a displacing entity is encouraged to establish at least one appropriately equipped site office which is accessible to all the area residents who may be displaced and is staffed with trained or experienced relocation personnel. Office hours should be scheduled to accommodate persons unable to visit the office during normal business hours.

(c) Each displacing entity shall establish and maintain a formal grievance procedure for use by displaced persons seeking administrative review of the entity's determinations. The procedure shall be in accordance with the requirements of Article 5.

#### AUTHORITY:

Note: Authority cited: *Section 50460, Health and Safety Code*. Reference: *Sections 7260.5 and 7261, Government Code*.

## HISTORY:

1. Amendment of subsections (a)(1) and (a)(8) and new Note filed 8-12-97; operative 9-11-97 (Register 97, No. 33).

## § 6042. Replacement Housing Prior to Displacement; Notices to Displaced Persons

(a) No eligible person shall be required to move from his dwelling unless within a reasonable period of time prior to displacement comparable replacement dwellings (as defined in subsection 6008(c)) or, in the case of a temporary move (as defined in section 6044), adequate replacement dwellings (as defined in subsection (b) below) are available to such person.

(b) The criteria for adequate replacement dwellings are in all respects identical to those for comparable replacement dwellings, except that an adequate replacement dwelling, with respect to the number of rooms, habitable living space and type of construction, need be only adequate not comparable.

(c) Reasonable Offer of Replacement Housing.

The requirements of this section shall be deemed to have been satisfied if a person is offered and refuses without justification reasonable choices of specifically identified comparable replacement dwellings which fully satisfy the criteria set forth in the Guidelines. The offers shall be in writing, in a language understood by the displaced person. The number of offers determined to be reasonable should be not less than three.

(d) Notice.

No eligible person occupying property shall be required to move from a dwelling or to move a business or farm operation, without at least 90 days written notice from the public entity requiring the displacements. Public entities shall notify each individual tenant to be displaced as well as each owner-occupant. (These requirements are in addition to those contained in sections 6040 and 6046.)

(e) Waiver.

The requirement in subsection (a) above may be waived only when immediate possession of real property is of crucial importance and by one of the following circumstances:

(1) When displacement is necessitated by a major disaster as defined in Section 102(2) of the Hazard Mitigation and Relocation Assistance Act of 1993 (42 U.S.C. 5121) and/or the California Natural Disaster Assistance Act.

(2) During periods of declared national or state emergency.

## AUTHORITY:

Note: Authority cited: *Section 50460, Health and Safety Code*. Reference: *Sections 7260.5, 7261 and 7264.5, Government Code*.

## HISTORY:

1. Amendment of subsections (a) and (e)(1) and new Note filed 8-12-97; operative 9-11-97 (Register 97, No. 33).

## § 6044. Temporary Move

(a) General.

(1) A public entity shall be required to minimize to the greatest extent feasible the use of temporary relocation resources (as defined in section 6042) but, when a project plan anticipates moves back into completed project accommodations, temporary relocation resources may be used, at the displaced person's election for a limited period of time.

(2) Temporary relocation does not diminish the responsibility of the public entity to provide relocation assistance, services and benefits designed to achieve permanent relocation of displaced persons into comparable replacement dwellings.

(b) Requirements.

(1) Temporary replacement housing may not be relied upon if comparable replacement housing will not be available to the displaced person within 12 months of the date of the temporary move.

(2) Prior to the move, the public entity shall have determined and have provided written assurance to each displaced person that:

(A) Comparable replacement housing will be made available at the earliest possible time but in any event no later than 12 months from the date of the move to temporary housing. Temporarily housed persons may agree to extend the 12 month limitation but, if they do not, the public entity shall ensure that comparable replacement dwellings are available within the 12 month period.

(B) Comparable replacement housing will be made available, on a priority basis, to the individual or family who has been temporarily rehoused.

(C) The move to temporary housing will not affect a claimant's eligibility for a replacement housing payment nor deprive him of the same choice of replacement housing units that would have been made available had the temporary move not been made and the costs of a temporary move will not be considered as all or a part of the relocation payments to which a displaced person is entitled.

(D) If a project plan anticipates moves back into replacement housing accommodations in the project or program area, the person who has been temporarily displaced will be given priority opportunity to obtain such housing accommodations.

(E) The public entity will pay all costs in connection with the move to temporary housing, including increased housing costs.

§ 6046. Informational Program

(a) Basic Requirements.

The displacing entity shall establish and maintain an information program that provides for the following:

(1) Preparation and distribution of informational material as early as practicable, to each occupant of the property. This material shall be distributed within 60 days following the initiation of negotiations (see paragraph 6040(a)(1)) and not less than 90 days in advance of displacement except for those situations described in subsection 6042(e). Where appropriate, separate informational statements shall be prepared for residential and for non-residential occupants.

(2) Conducting personal interviews and maintaining personal contacts with occupants of the property to the maximum extent practicable.

(3) Utilizing meetings, newsletters, and other mechanisms, including local media available to all persons, for keeping occupants of the property informed on a continuing basis. The criterion for selecting among various alternatives shall be the likelihood of actually communicating information to such persons. Legal publications, legal ads in local newspapers of general circulation and similar means which may go unnoticed are deemed to be inadequate.

(b) Language. Informational material should be prepared in the language(s) most easily understood by the recipients. In displacement areas where there are significant concentrations of persons who do not read, write, or understand English fluently, the native language of the people should be used and all informational material should be provided in the native language(s) and English.

(c) Method of Delivery. To assure receipt of the informational material, the local agency should arrange to have the material either hand-delivered to each occupant of the property with a request for a written receipt, or sent by certified mail, return receipt requested.



(d) General and Specific Information. In addition to disseminating general information of the type described in this section, the displacing entity shall also provide each person with individual, written notification as soon as his eligibility status has been established.

(e) Content of Informational Statement. Attachment A identifies the kinds of information required to be included in statements distributed to occupants of the property. The figure lists minimum requirements. The displacing entity should include any additional information that it believes would be helpful. (Sec Attachment A.)

#### AUTHORITY:

Note: Authority cited: *Section 50460, Health and Safety Code*. Reference: *Sections 7260, 7260.5 and 7261, Government Code*.

#### HISTORY:

1. Amendment of subsection (a)(1) filed 11-5-76 as an emergency; designated effective 11-27-76 (Register 76, No. 44).
2. Certificate of Compliance filed 2-16-77 (Register 77, No. 8).
3. Amendment of subsection (a)(1) and new Note filed 8-12-97; operative 9-11-97 (Register 97, No. 33).

#### § 6048. Survey and Analysis of Relocation Needs

(a) (1) Requirement. Immediately following the initiation of negotiations interview all eligible persons, business concerns, including nonprofit organizations, and farm operations to obtain information upon which to plan for housing and other accommodations, as well as counseling and assistance needs.

(2) Coordination with Other Agencies. Other agencies may also be conducting surveys in the area at the same time. Coordination will be necessary to avoid duplication and to ensure that necessary information is available at the appropriate time. Surveys utilized to gather data for social service referrals should be planned in cooperation with social service agencies and a referral system should be established.

(3) Information to Persons to Be Displaced. The local agency shall carefully explain and discuss fully with each person interviewed the purpose of the survey and the nature and extent of relocation payments and assistance that will be made available. All persons shall be advised and encouraged to visit the relocation office for information and assistance.

(4) Relocation Records. Based on information obtained during the survey and other sources as applicable, the local agency shall prepare and maintain an accurate relocation record for each person to be displaced. The record shall contain a description of the pertinent characteristics of the persons to be displaced and the assistance deemed to be necessary.

(b) The survey shall be by direct, personal interview, except where repeated efforts indicate that is not possible. When a person cannot be interviewed or the interview does not produce the information to be obtained reasonable efforts shall be made to obtain the information by other means. Eligible persons should be encouraged to bring any change in their needs to the attention of relocation officials. The survey shall be updated at least annually.

(c) A public entity shall endeavor to obtain the following information: income; whether a person is elderly or handicapped; size of family; age of children; location of job and factors limiting accessibility; area of preferred relocation; type of unit preferred; ownership or tenant preference; need for social and public services, special schools and other services; eligibility for publicly assisted housing; and with reference to the present dwelling, the rent, the type and quality of construction, the number of rooms and bedrooms, the amount of habitable living space, and locational factors including among others public utilities, public and commercial facilities (including transportation and schools) and neighborhood conditions (including municipal services). Other matters that concern a household as its members contemplate relocation should also be included.

(d) A written analysis of relocation housing needs shall be prepared. It shall be prepared in sufficient detail to enable determination of the availability for all potential displaces of housing which meets the standards set forth in the definition of comparable replacement housing. The information concerning home ownership and rental units shall be



provided separately. The number of units needed shall be identified by cost for each size category. The needs of elderly and handicapped households shall be shown separately and shall include information on the number of such households requiring special facilities and the nature of such facilities.

The statement of relocation housing needs shall include a description of the locational characteristics of the displacement area neighborhoods corresponding to the requirements of comparable replacement housing. Information shall be provided concerning proximity to present employment sources, medical and recreational facilities, parks, community centers, shopping, transportation and schools. Information concerning proximity to other relevant needs and amenities is essential to ensuring that no residents are incapacitated by the relocation and such information also should be provided.

#### § 6050. Failure to Conduct Timely and Effective Survey

When a survey is not conducted in a timely and effective manner, the public entity shall be obligated to make every effort to locate all eligible persons who have moved so that their needs can be included in the survey and the impact on the housing stock in the community can be more accurately determined. The public entity shall offer such persons all relocation assistance and benefits for which they otherwise qualify and, in addition, shall compensate such persons for all costs occasioned by the entity's failure to provide timely notice and offers of relocation assistance and benefits.

#### § 6052. Survey and Analysis of Available Relocation Resources

(a) (1) To enable a public entity reasonably to determine that the requisite comparable replacement dwellings will be available, the public entity, within 60 days following the initiation of negotiations, shall initiate a survey and analysis of available comparable relocation resources.

If a recent survey that provides the information identified in this section is not available, the public entity shall conduct a survey and analysis of the housing market. If a recent survey is available, but it does not reflect more recent, significant changes in housing market conditions, the survey shall be updated or it shall not be relied upon.

(2) When more than 15 households will be displaced, survey results shall be submitted for review to local housing, development and planning agencies and shall be compared to other existing information on housing availability.

(3) The survey shall be updated at least annually.

(b) The survey area shall be reasonably related to the displacement area and to the needs and preferences of the persons to be displaced, as indicated in the written analysis prepared pursuant to section 6048. The survey area shall have relevant characteristics (see subsection 6008(c)) which equal or exceed those of the neighborhood from which persons are to be displaced.

(c) A written analysis of relocation housing resources shall be prepared in sufficient detail to enable determination of the availability for all potential displacees of housing which meets the standards set forth in the definition of comparable replacement housing. The information concerning homeownership and rental units shall be provided separately. The number of units available shall be identified by cost for each size category. Resources available to meet the needs of elderly and handicapped households shall be shown separately and shall include information on the number of units with special facilities and the nature of such facilities.

The analysis of resources shall include a description of the locational characteristics of the survey area neighborhoods corresponding to the requirements of comparable replacement housing. Information shall be provided concerning proximity to present employment sources (with the consent of the displaced person a potential employer may be substituted), medical and recreational facilities, parks, community centers, shopping, transportation and schools. Information concerning proximity to other relevant needs and amenities is essential to ensuring that residents are not incapacitated by the relocation and such information should also be provided.

(d) (1) Units which do not satisfy the standards of comparable replacement housing, including the locational criteria, shall not be counted as a relocation resource.

(2) Uncompleted new construction or rehabilitation shall not be included in the gross figure unless there is a substantial likelihood that the units will be available when needed and at housing or rental costs within the financial means of the prospective occupants.

(3) In addition to the other requirements of this section, the gross figure representing the number of units available shall be discounted to reflect both concurrent displacement and the extent to which turnover is represented. Concurrent displacement by the federal government and its agencies, including federally-assisted projects, as well as displacement by other public entities shall be taken into account. Turnover is the dynamic operation by which occupancy changes occur within a standing inventory over a period of time and theoretically could occur in the complete absence of vacancies on a person to person basis. The use of turnover for relocation is not permissible. The displacing entity shall assume that four percent of the rental and one percent of the ownership units which meet the standards of comparable replacement dwellings (see section 6008(c)) represents turnover. The displacing entity shall use a higher percentage figure if such figure is more accurate. The displacing entity may use a lower figure if it establishes that the lower figure is a more accurate assumption.

(4) Publicly subsidized housing, including public housing, shall not be counted as a resource unless it reasonably can be established that:

(A) The units will be available when needed;

(B) The governmental body providing the subsidy has made, in writing, a reasonably binding commitment of assistance; and

(C) The units have been inspected and determined to be decent, safe and sanitary and the income ceilings, rent ranges and age restrictions, if any, have been considered.

(D) The number of units available in the community exceeds the number of households in need of the units. This requirement may be waived by the department if the public entity can establish that such units will be replaced by last resort housing within two years. To establish that last resort housing will be developed as required the public entity must have site control with permissive zoning, preliminary plans and conditional commitments for subsidy and financing or the equivalent. The public entity also must identify ownership.

(e) Uncompleted new construction or rehabilitation which is subsidized by public funds shall not be counted as a relocation resource unless the units are being subsidized to provide relocation resources.

#### AUTHORITY:

Note: Authority cited: *Section 50460, Health and Safety Code*. Reference: *Sections 7260.5 and 7261, Government Code*.

#### HISTORY:

1. Amendment of subsections (a)(1) and (a)(2), correction of subsection (e) designator, and new Note filed 8-12-97; operative 9-11-97 (Register 97, No. 33).

#### § 6054. Last Resort Housing

(a) No eligible person shall be required to move from his dwelling because of the action of a public entity unless comparable replacement housing is available to him.

(b) If on the basis of its survey and analysis of relocation needs and resources a public entity cannot determine that comparable replacement housing will be available as required, the public entity may not proceed with any phase of a project or other activity which will result in displacement unless it provides such housing. (See Article 4.)

(c) If the action of a public entity has resulted or is resulting in displacement and comparable replacement housing is not available as needed, the public entity shall use its funds, or funds authorized for the project to provide such housing (see Article 4), or shall terminate or suspend further implementation of the project activity in accordance with the provisions of section 6018.

(d) Temporary relocation resources may be relied upon in the interim only if the provisions of section 6004 are satisfied.

#### § 6056. Termination of Relocation Assistance

A public entity's relocation obligations cease under the following circumstances:

- (a) A displaced person moves to a comparable replacement dwelling and receives all assistance and payments to which he is entitled.
- (b) The displaced person moves to substandard housing, refuses reasonable offers of additional assistance in moving to a decent, safe and sanitary replacement dwelling and receives all payments to which he is entitled.
- (c) All reasonable efforts to trace a person have failed. To ensure that the action of a public entity does not reduce the housing supply in critical categories or locations, unsuccessful efforts to trace a particular displaced person shall not lessen the obligation to provide last resort housing. (See Article 4.)
- (d) The business concern or farm operation has received all assistance and payments to which it is entitled and has been successfully relocated or has ceased operations.
- (e) A person displaced from his dwelling, business or farm refuses reasonable offers of assistance, payments and comparable replacement housing.

#### § 6058. Eviction

(a) Eviction is permissible only as a last resort. It in no way affects the eligibility of evicted displaced persons for relocation payments. Relocation records must be documented to reflect the specific circumstances surrounding the eviction.

(b) Eviction shall be undertaken only for one or more of the following reasons:

- (1) Failure to pay rent, except in those cases where the failure to pay is due to the lessor's failure to keep the premises in habitable condition, is the result of harassment or retaliatory action or is the result of discontinuation or substantial interruption of services.
- (2) Performance of a dangerous, illegal act in the unit.
- (3) Material breach of the rental agreement and failure to correct breach within 30 days of notice.
- (4) Maintenance of a nuisance and failure to abate within a reasonable time following notice.
- (5) Refusal to accept one of a reasonable number of offers of replacement dwellings.
- (6) The eviction is required by State or local law and cannot be prevented by reasonable efforts on the part of the public entity.

#### § 6060. Evaluation of Relocation

(a) A public entity is encouraged to evaluate its relocation program, assessing the quality and quantity of services provided as well as displacee satisfaction, to determine the adequacy of program planning and to ascertain whether any persons have been denied the full benefits and services to which they are entitled. The evaluation should be based upon an annual or continual inspection of files and records, case interviews, and inspection of replacement housing and business and farm replacement locations and discussions with local individuals or organizations familiar with relocation issues. A written evaluation should be prepared at least annually.

(b) The files and records of displaced persons and property owners should be selected at random. The review should include any cases that were identified by previous monitoring as requiring corrective action and should assess the public entity's progress in taking corrective action. Both relocation and acquisition activities should be covered by the review.

(1) The relocation sample should include cases in which all payments have been completed and cases in which the person has been displaced but all payments have not yet been made. The sample should provide a basis for the reviewer to determine not only whether payments were computed properly and made promptly, but also whether displaced persons received proper notice of the full range of relocation assistance and services to which they are entitled. Priority

attention should be given to cases in which a grievance has been filed or the agency has determined that a person is ineligible for relocation benefits.

(2) The acquisition sample should be based on cases in which settlement has been completed. However, if necessary to provide a representative sample of acquisition activities, the reviewer should include incomplete transactions in which negotiations have been initiated.

(c) After the records and files have been reviewed, the reviewer should select cases for further evaluation through personal interviews with displaced persons and/or owners and the inspection of housing to which persons have moved. The interviews and housing inspections should serve both to spot check the accuracy of the information obtained in the examination of the records and files and give the reviewer a better perspective on the agency's performance.

The number and type of cases for which interviews and housing inspections are to be carried out should reflect the reviewer's judgment based on the information he has just reviewed. Generally, an interview and inspection should be carried out for at least one of every five cases for which the files and records have been reviewed. Only where the number of persons displaced is less than 25 should the number of interviews and inspections be less than 10. In no case should the number of interviews and inspections be lower than the lesser of five and the number of persons displaced. To the extent possible, the interviews should cover a representative cross section of the types of cases in the agency's workload: e.g., relocation cases involving families of various sizes as well as individuals and business concerns (including both owners and tenants), and acquisition transactions involving residential, commercial and industrial properties.

(d) In addition to the above, the following factors are among those which should be considered:

- (1) The effectiveness of efforts to provide relocation services to displaced persons, including timeliness of notice and correctness of eligibility determinations.
- (2) The satisfaction of relocated families, individuals and business concerns in their new locations.
- (3) The extent to which self-moves to substandard housing have been minimized.
- (4) The effectiveness of efforts to provide relocation services to business concerns, including counseling services and SBA loans to aid in their reestablishment.
- (5) The promptness of processing claims and the making of payments, including the amounts, delivery, and use of relocation payments.
- (6) The number and magnitude of rent increases following acquisition and displacement.
- (7) The effectiveness of methods used to resolve difficulties experienced by site occupants.
- (8) The effectiveness of the public entity's grievance procedures.
- (9) The extent of resident involvement in planning the relocation program.
- (10) The effectiveness in assuring equal opportunity for displaced persons and in reducing patterns of minority-group concentration.
- (11) The effectiveness of relocation in upgrading the housing and overall environmental conditions of persons displaced.
- (12) The effectiveness of the social service program, including counseling services, in helping residents adjust to relocation and in helping solve individual and family problems.
- (13) The impact on those segments of the housing market serving the income groups displaced.

#### § 6080. Purpose

The purpose of this Article is to set forth the types of, and specific eligibility criteria for, relocation payments to displaced persons. Basic eligibility conditions are set forth in section 6084. Specific conditions relating to particular payments are described in later sections.

#### § 6082. Relocation Payments by Public Entity

A public entity shall make relocation payments to or on behalf of eligible displaced persons in accordance with and to the full extent permitted by this Article. The obligations described in this Article are in addition to those in Article 6.

#### § 6084. Basic Eligibility Conditions

A person establishes basic eligibility for relocation payments if he satisfies the conditions described in section 6034. A person who moves from real property or who moves his personal property from real property because he will be displaced from other real property on which he conducts a business or farm operation, establishes eligibility on the basis of the move from such other property only for payments made pursuant to section 6090.

#### § 6086. Notice of Intent to Displace

A public entity may issue a written Notice of Intent to Displace at any time after forming a reasonable expectation of acquiring real property. Such a notice, by establishing eligibility prior to acquisition, will enable a public entity to respond to hardship and other situations.

#### § 6088. Filing of Claims; Submission of Tax Returns

All claims filed with the public entity shall be submitted within eighteen months of the date on which the claimant receives final payment for the property or the date on which he moves, whichever is later. The displacing entity may extend this period upon a proper showing of good cause.

Except where specifically provided otherwise a claimant shall not be required to submit a copy of his tax returns in support of a claim for relocation payments.

#### § 6090. Actual Reasonable Moving Expenses

(a) General. A public entity shall make a payment to a displaced person who satisfies the pertinent eligibility requirements of section 6084 and the requirements of this section, for actual reasonable expenses specified below and subject to the limitations set forth in subsection (c) of this section for moving himself, his family, business, farm operation or other personal property. In all cases the amount of a payment shall not exceed the reasonable cost of accomplishing the activity in connection with which a claim has been filed.

The moving and related expenses for which claims may be filed shall include:

(1) Transportation of persons and property not to exceed a distance of 50 miles from the site from which displaced, except where relocation beyond such distance of 50 miles is justified;

(2) Packing, crating, unpacking and uncrating personal property;

(3) Such storage of personal property, for a period generally not to exceed 12 months, as determined by the public entity to be necessary in connection with relocation;

(4) Insurance of personal property while in storage or transit; and

(5) The reasonable replacement value of property lost, stolen or damaged (not through the fault or negligence of the displaced person, his agent, or employee) in the process of moving, where insurance covering such loss, theft or damage is not reasonably available.

(6) The cost of disconnecting, dismantling, removing, reassembling, reconnecting and reinstalling machinery, equipment or other personal property (including goods and inventory kept for sale) not acquired by the public entity, including connection charges imposed by public utilities for starting utility service.

(b) Actual Reasonable Moving Expenses--Displaced Business Concerns and Farm Operations.

In addition to those compensable expenses set forth in subsection (a) of this section, a displaced business concern or farm operation may file a claim for the following moving and related expenses:



(1) The cost, directly related to displacement of modifying the machinery, equipment, or other personal property to adapt it to the replacement location or to utilities available at the replacement location or modifying the power supply.

(2) Claims for payment under this subsection shall be subject to the following limitations:

(A) Reimbursable costs shall be reasonable in amount.

(B) The cost could not be avoided or substantially reduced at an alternate available and suitable site to which the business was referred.

(3) The cost of any license, permit or certification required by a displaced business concern to the extent such cost is necessary to the reestablishment of its operation at a new location.

(4) The reasonable cost of any professional services (including but not limited to, architects', attorneys' or engineers' fees, or consultants' charges) necessary for planning the move of personal property, moving the personal property, or installation of relocated personal property at the replacement site.

(5) Where an item of personal property which is used in connection with any business or farm operation is not moved but is replaced with a comparable item, reimbursement in an amount not to exceed (1) the replacement cost, minus any net proceeds received from its sale, or (2) the estimated cost of moving, whichever is less.

(c) Advance Payments. A displaced person may be paid for his anticipated moving expenses in advance of the actual move. A public entity shall provide advance payment whenever later payment would result in financial hardship. Particular consideration shall be given to the financial limitations and difficulties experienced by low and moderate income persons and small farm and business operations.

(d) The specific provisions contained in this section are not intended to preclude a public entity's reliance upon other reasonable means of effecting a move, including contracting moves and arranging for assignment of moving expense payments by displaced persons.

(e) Self-moves. Without documentation of moving expenses actually incurred, a displaced person electing to self-move may submit a claim for his moving expenses to the public entity in an amount not to exceed an acceptable low bid or an amount acceptable to the displacing entity.

(f) Personal Property of Low Value and High Bulk--Business or Farm Operation. Where, in the judgment of the public entity, the cost of moving any item of personal property of low value and high bulk which is used in connection with any business or farm operation would be disproportionate in relation to its value, the allowable reimbursement for the expense of moving such property shall not exceed the difference between the cost of replacing the same with a comparable item available on the market and the amount which would have been received for such property on liquidation. This provision may in appropriate situations be applied to claims involving the moving of junkyards, stockpiles, sand, gravel, minerals, metals and similar property.

(g) Documentation in Support of a Claim.

(1) General. Except in the case of a displaced person conducting a self-move as provided in subsection (e) above, a claim for a payment under this section shall be supported by a bill or other evidence of expenses incurred. By pre-arrangement between the public entity, the site occupant, and the mover, evidenced in writing, the claimant or the mover may present an unpaid moving bill to the public entity, and the public entity may pay the mover directly.

(2) Business and Farm Operations. Each claim in excess of \$ 1,000 for the costs incurred by a displaced person for moving his business or farm operation shall be supported by competitive bids in such number as are practical. If the public entity determines that compliance with the bid requirement is impractical or if estimates in an amount of less than \$ 1,000 are obtained, a claim may be supported by estimates in lieu of bids.

(h) Whenever a public entity must pay the actual cost of moving a displaced person the costs of such move shall be exempt from regulation by the Public Utilities Commission as provided by section 7262(e) of the Act. The public entity may solicit competitive bids from qualified bidders for performance of the work. Bids submitted in response to such solicitations shall be exempt from regulation by the Public Utilities Commission.

(i)(1) Reestablishment Expenses. In addition to moving expense payments, a farm, nonprofit organization or small business of not more than 500 employees, shall be entitled to actual and reasonable reestablishment expenses, not to

exceed \$ 10,000.00. Reestablishment expenses shall be only those expenses that are reasonable and necessary and include, but are not limited to:

(A) Repairs or improvements to the replacement property as required by Federal, State or local law, code or ordinance.

(B) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

(C) Construction and installation costs for exterior signing to advertise the business.

(D) Provision of utilities from right-of-way to improvements on the replacement site.

(E) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling or carpeting.

(F) Licenses, fees and permits when not paid as part of moving expenses.

(G) Feasibility surveys, soil testing and marketing studies.

(H) Advertisement of replacement location.

(I) Professional services in connection with the purchase or lease of a replacement site.

(J) Estimated increased costs of operation during the first 2 years at the replacement site for such items as:

1. Lease or rental charges,
2. Personal or real property taxes,
3. Insurance premiums, and
4. Utility charges, excluding impact fees.

(K) Impact fees or one-time assessments for anticipated heavy usage.

(L) Other items essential to the reestablishment of the business.

(M) For purposes of this subsection the term "small business" shall mean a business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a small business for purposes of this subsection.

(2) Ineligible expenses. The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(A) Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.

(B) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

(C) Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in paragraph (i)(1)(E) of this section.

(D) Interest on money borrowed to make the move or purchase the replacement property.

(E) Payment to a part-time business in the home which does not contribute materially to the household income.

#### AUTHORITY:

Note: Authority cited: *Section 50460, Health and Safety Code*. Reference: *Section 7262(a)(4), Government Code*.

#### HISTORY:

1. Amendment of section and new Note filed 8-12-97; operative 9-11-97 (Register 97, No. 33).



#### § 6092. Actual Direct Losses of Tangible Personal Property

(a) General. A public entity shall make a payment to a displaced person who satisfies the eligibility requirements of section 6090 and this section, for actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, in an amount determined by the public entity to be in accordance with the provisions of this section.

(b) Determining Actual Direct Loss of Property. Actual direct loss of property shall be determined on the basis of the lesser of the following:

- (1) The fair market value of the property for continued use at its location prior to displacement.
- (2) The estimated reasonable costs of relocating the property.

The public entity may require that the owner first make a bona fide effort to sell the property or it may permit the owner not to do so. The proceeds realized from any sale of all or part of the property shall be deducted from the determination of loss. In calculating payment under this section the reasonable cost of an effort to sell shall be added to the determination of loss.

(c) Documentation to Support Claim. A claim for payment hereunder shall be supported by written evidence of loss which may include appraisals, certified prices, bills of sale, receipts, cancelled checks, copies of advertisements, offers to sell, auction records, and other records appropriate to support the claim or the public entity may agree as to the value of the property left in place.

#### § 6094. Actual Reasonable Expenses in Searching for a Replacement Business or Farm

A displaced person who satisfies the pertinent eligibility requirements of section 6090 with respect to actual reasonable moving expenses, shall be eligible for a payment in an amount not to exceed \$ 1,000, in searching for a replacement business or farm, including expenses incurred for:

- (a) Transportation;
- (b) Meals and lodging away from home;
- (c) Time spent in searching, based on the hourly wage rate of the salary or earnings of the displaced person or his representative; and
- (d) Fees paid to a real estate agent or broker to locate a replacement business or farm.

#### AUTHORITY:

Note: Authority cited: *Section 50460, Health and Safety Code*. Reference: *Section 7262(a)(3), Government Code*.

#### HISTORY:

1. Amendment of first paragraph and subsection (c) and new Note filed 8-12-97; operative 9-11-97 (Register 97, No. 33).

#### § 6096. Moving Expenses--Outdoor Advertising Businesses

A displaced person who conducts a lawful activity primarily for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of outdoor advertising displays is entitled to payment for the reasonable cost of moving such displays or their in-place value, whichever is lesser.

#### NOTES:

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## § 6098. Alternate Payments--Individuals and Families

A person or family, who is displaced from a dwelling and is eligible for a payment for actual reasonable moving expenses under section 6090, may elect to receive and shall be paid, in lieu of such payment a moving expense and dislocation allowance determined in accordance with established Federal Highway Administration schedules maintained by the California Department of Transportation.

## AUTHORITY:

Note: Authority cited: *Section 50460, Health and Safety Code*. Reference: *Section 7262(b), Government Code*.

## HISTORY:

1. Amendment of subsection (a) filed 11-5-76 as an emergency; designated effective 11-27-76 (Register 76, No. 44).
2. Certificate of Compliance filed 2-16-77 (Register 77, No. 8).
3. Amendment of section and new Note filed 8-12-97; operative 9-11-97 (Register 97, No. 33).

## § 6100. Alternate Payments--Businesses and Farm Operations

## (a) General.

(1) A person who is displaced from his place of business or farm operation and is eligible for payments under sections 6090, 6092, 6094, or 6096, and complies with the requirements of this section, may elect to receive and shall be paid, in lieu of such payments, a payment equal to the average annual net earnings of the business or farm operation (but not including a business as described in section 6096) as determined in accordance with subsection (b) below, except that such payment shall be not less than \$ 1,000 nor more than \$ 20,000. For purposes of this section, the dollar limitation specified in the preceding sentence shall apply to a single business, regardless of whether it is carried on under one or more legal entities.

(2) Loss of Goodwill. When payment under this section will precede settlement of a claim for compensation for loss of goodwill under the Eminent Domain Law, the public entity before tendering payment shall state in writing what portion of the payment, if any, is considered to be compensation for loss of goodwill and shall explain in writing that any payment made pursuant to *Code of Civil Procedure, Sections 1263.510 et seq.* (the Eminent Domain Law, Chapter 9, Article 6--"Compensation for Loss of Goodwill") will be reduced in the same amount. The portion considered to be compensation for loss of goodwill shall not exceed the difference between the payment made under this section and an amount which reasonably approximates the payments for which the displaced person otherwise would be eligible under Sections 6090, 6092, 6094, and 6096. Failure to provide such written statement and explanation shall constitute a conclusive indication that no portion of the payment is considered to be compensation for loss of goodwill for the purposes of that portion of the Code of Civil Procedure referenced above.

(b) Requirements--Businesses. Payment shall not be made under this section unless the public entity determines that:

(1) The business is not operated solely for rental purposes and cannot be relocated without a substantial loss of its existing patronage, based on a consideration of all pertinent circumstances including such factors as the type of business conducted, the nature of the clientele, the relative importance to the displaced business of its present and proposed location, and the availability of a suitable relocation site;

(2) The business is not part of a commercial enterprise having no more than three (3) other establishments which are not being acquired for a project and which is engaged in the same or similar business. Whenever the sole remaining facility of a business which has been displaced from its principal location:

(A) Has been in operation for less than two years;

(B) Has had average annual gross receipts of less than \$ 2,000 during the two taxable years prior to displacement of the major component of the business; or

(C) Has had average annual net earnings of less than \$ 1,000 during the two taxable years prior to the displacement of the major component of the business, the remaining facility will not be considered another "establishment" for purposes of this section; and

(3) The displaced business:

(A) Had average annual gross receipts of at least \$ 5,000 during the two taxable years prior to displacement; or

(B) The displaced business had average annual net earnings of at least \$ 1,000 during the two taxable years prior to displacement; or

(C) The displaced business contributed at least 33 1/3 percent of the total gross income of the owner(s) during each of the two taxable years prior to displacement. If in any case the public entity determines that the two year period prior to displacement is not representative of average receipts, earnings or income, it may make use of a more representative period.

(D) If the application of the above criteria creates an inequity or hardship, the displacing agency may use other criteria as permitted in 49 CFR 24.306.

(c) Determination of Number of Businesses.

In determining whether one or more legal entities, all of which have been acquired, constitute a single business, the following factors among others shall be considered:

(1) The extent to which the same premises and equipment are shared.

(2) The extent to which substantially identical or intimately interrelated business functions are pursued and business and financial affairs are commingled.

(3) The extent to which such entities are held out to the public, and to those customarily dealing with such entities, as one business.

(4) The extent to which the same person or closely related persons own, control or manage the affairs of the entities.

(d) Requirements--Farms. In the case of a farm operation, no payment shall be made under this section unless the public entity determines that the farm met the definition of a farm operation prior to its acquisition. If the displacement is limited to only part of the farm operation, the operator will be considered to have been displaced from a farm operation if: the part taken met the definition of a farm operation prior to the taking and the taking caused such a substantial change in the nature of the existing farm operation as to constitute a displacement.

(e) Requirements--Nonprofit Organizations. In the case of a nonprofit organization, no payment shall be made under this section unless the public entity determines that:

(1) The nonprofit organization cannot be relocated without a substantial loss of its existing patronage (the term "existing patronage" as used in connection with a nonprofit organization includes the membership, persons, community, or clientele served or affected by the activities of the nonprofit organization); and

(2) The nonprofit organization is not a part of an enterprise having more than three (3) other establishments not being acquired which is engaged in the same or similar activity.

(f) Net Earnings. The term "average annual net earnings" as used in this section means one-half of any net earnings of the business or farm operation, before federal and state income taxes, during the two (2) taxable years immediately preceding the taxable year in which the business or farm operation moves from the real property acquired for such project, or during such other period as the head of the public entity determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse or his dependents during such period. The term "owner" as used in this section includes the sole proprietor in a sole proprietorship, the principal partners in a partnership, and the principal stockholders of a corporation, as determined by the public entity. For purposes of determining a principal stockholder, stock held by a husband, his wife and their dependent children shall be treated as one unit.

(g) If a displaced person who conducts a business or farm operation elects to receive a fixed payment under this section, he shall provide proof of his earnings from the business or farm operation to the agency concerned. Proof of

earnings may be established by income tax returns, financial statements and accounting records or similar evidence acceptable to the public entity.

**AUTHORITY:**

Note: Authority cited: *Section 50460, Health and Safety Code*. Reference: *Section 7262(c), Government Code*.

**HISTORY:**

1. Amendment of subsection (e)(2) filed 11-5-76 as an emergency; designated effective 11-27-76 (Register 76, No. 44).
2. Certificate of Compliance filed 2-16-77 (Register 77, No. 8).
3. Amendment of subsections (a)(1)-(b)(2) and (b)(3)(A), new subsection (b)(3)(D), amendment of subsections (e)(2) and (f), and new Note filed 8-12-97; operative 9-11-97 (Register 97, No. 33).

**§ 6102. Replacement Housing Payments for Homeowners**

(a) General. A public entity shall make to a person who is displaced from a dwelling and who satisfies the pertinent eligibility requirements of section 6084 and the conditions of subsection (b) of this section, a payment not to exceed a combined total of \$ 22,500 for:

(1) The amount, if any, which when added to the acquisition cost of the dwelling acquired for the project equals the reasonable cost, as determined in accordance with subsection (c), of a comparable replacement dwelling. This amount shall not exceed the difference between the acquisition price of the acquired dwelling and the actual purchase price of the replacement dwelling, except where a displaced person, in the circumstance described in paragraph 6108(a)(1), is willing to use the extra money to improve the condition of the dwelling.

(2) The amount, if any, to compensate the displaced person for any increased interest costs, as determined in accordance with subsection (c), he is required to pay for financing the acquisition of a replacement dwelling. The payment shall not be made unless the dwelling acquired by the public entity was encumbered by a bona fide mortgage which was a valid lien on the dwelling for not less than 180 days prior to the initiation of negotiations for acquisition of such dwelling. (This time requirement may be modified in accordance with the provisions of subsection (b) below.)

(3) Reasonable expenses, determined in accordance with subsection (c) of this section, incurred by the displaced person incident to the purchase of the replacement dwelling.

(4) In accordance with section 6108, the cost of rehabilitating a dwelling which does not satisfy the decent, safe and sanitary standard.

**(b) Eligibility Conditions.**

(1) A displaced person is eligible for payment under this section if such person:

(A) Is displaced from a dwelling that is acquired;

(B) Has actually owned and occupied such dwelling for not less than 180 days prior to the initiation of negotiations for its acquisition; and

(C) Purchases and occupies a replacement dwelling within one year subsequent to the date on which he received final payment from the public entity of all costs of the acquired dwelling or the date on which he moves from the acquired dwelling, whichever is later.

(2) If an owner satisfies all but the 180 day requirement and can establish to the satisfaction of the public entity that he bought the dwelling with the intention of making it his place of residence, that the move was not motivated by a desire to receive relocation assistance and benefits, and that he neither knew nor should have known that public acquisition was intended the public entity may reduce the requirement as necessary.

(3) Where for reasons beyond the control of the displaced person completion of construction, rehabilitation, or relocation of a replacement dwelling is delayed beyond the date by which occupancy is required, the public entity shall determine the date of occupancy to be the date the displaced person enters into a contract for such construction, rehabilitation, or relocation or for the purchase, upon completion, of a dwelling to be constructed or rehabilitated, if, in fact, the displaced person occupies the replacement dwelling when the construction or rehabilitation is completed.

(4) Where, for reasons of hardship or circumstances beyond the control of the displaced person, such person is unable to occupy the replacement dwelling by the required date, the public entity may extend the deadline as necessary. If by the deadline the displaced person has contracted to purchase a replacement dwelling, the public entity should extend the deadline.

(5) No person otherwise eligible for a payment under this section or under section 6104 shall be denied such eligibility as a result of his being unable, because of a major state or national disaster, to meet the occupancy requirements.

(c) Computation of Replacement Housing Payment.

(1) Cost of Comparable Replacement Dwelling.

(A) In determining the reasonable cost of a comparable replacement dwelling, the public entity concerned shall use one of the following methods:

1. Comparative Method. On a case-by-case basis by determining the listing price of dwellings which have been selected by the public entity and which are most representative of the acquired dwelling unit and meet the definition of comparable replacement dwelling set out in subsection 6008(c). Whenever possible the listing price of at least three dwellings shall be considered.

2. Schedule Method. Where the public entity determines that the comparative method is not feasible, it may establish a schedule of reasonable acquisition costs for the various types of comparable replacement dwellings. If more than one entity is administering a project causing displacement in the area, it shall cooperate with the other entities in establishing a uniform schedule for the area. The schedule shall be based on a current analysis of the market to determine a reasonable cost for each type of dwelling to be purchased. In large urban areas this analysis may be confined to the sub-area from which persons are displaced or may cover several different sub-areas, if they satisfy or exceed the criteria listed in subsection 6008(c). To assure the greatest comparability of dwellings in any analysis, the analysis shall be divided into classifications of the type of construction, number of bedrooms, and price ranges.

3. Alternative Method. Where the public entity determines that neither the schedule, nor comparative method is feasible in a given situation, by the use of another reasonable method.

(B) Whichever method is selected the cost shall be updated to within three months of the date of purchase of the replacement dwelling.

(2) Interest Payments. Interest payments shall be equal to the discounted present value of the difference between the aggregate interest applicable to the amount of the principal of the mortgage on the acquired dwelling over its remaining term at the time of acquisition, and other debt service costs, and the aggregate interest paid on the mortgage on the replacement dwelling, and other debt service costs. The term and amount of the mortgage on the replacement dwelling for purposes of this paragraph shall be the lesser of the remaining term and amount of the mortgage on the acquired dwelling, or the actual term and amount of the mortgage on the replacement dwelling. The amount of the debt service cost with respect to the replacement dwelling shall be the lesser of the debt service cost based on the cost required for a comparable dwelling, or the debt service cost based on the actual cost of the replacement dwelling.

Prepaid interest or "points" shall be considered in the determination of aggregate interest.

In calculating the amount of compensation, increased interest cost shall be reduced to discounted present value using the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(3) Expenses Incident to the Purchase of the Replacement Dwelling.

Payment under this section shall include the amount necessary to reimburse the displaced person for actual costs incurred by him incident to the purchase of the replacement dwelling, including but not limited to the following: legal, closing, and related costs including title search, preparing conveyance contracts, notary fees, surveys, preparing drawings or plats, and charges paid incident to recordation; lender, FHA, VA or similar appraisal cost; FHA, VA or similar



application fee; cost for certification of structural soundness; credit report charges; charge for owner's and mortgagee's evidence or assurance of title; escrow agent's fee; and sales or transfer taxes. Payment for any such expenses shall not exceed the amount attributable to the purchase of a replacement dwelling. Such expenses shall be reasonable and legally required or customary in the community.

Reimbursement shall not be made under the provisions of this paragraph for any fee, cost, charge, or expense which is determined to be a part of the debt service or finance charge under Title I of the Truth in Lending Act (Pub. L. 90-321), and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System. Any such sum should be considered in the determination of interest payments.

(d) Multi-family Dwelling. In the case of a displaced homeowner who is required to move from a one-family unit of a multi-family building which he owns, the replacement housing payment shall be based on the cost of a comparable one-family unit in a multi-family building of approximately the same density or if that is not available in a building of the next less density, or, if a comparable one-family unit in such a multi-family building is not available, the cost of an otherwise comparable single-family structure.

(e) Owner Retention.

(1) If a displaced homeowner elects to retain, move, and occupy his dwelling, the amount payable under this section is the difference between the acquisition price of the acquired property and the sum of the moving and restoration expenses, the cost of correcting decent, safe, and sanitary deficiencies, if any, and the actual purchase price of a comparable relocation site. A public entity may limit the payment made under this subsection to the amount of the replacement housing payment for which the homeowner would otherwise be eligible.

(2) The payment shall not exceed \$ 22,500.

(f) Provisional Payment Pending Condemnation.

If the exact amount of a replacement housing payment cannot be determined because of a pending condemnation suit, the public entity concerned may make a provisional replacement housing payment to the displaced homeowner equal to the difference between the public entity's maximum offer for the property and the reasonable cost of a comparable replacement dwelling, but only if the homeowner enters into an agreement that upon final adjudication of the condemnation suit the replacement housing payment will be recomputed on the basis of the acquisition price determined by the court. If the acquisition price as determined by the court is greater than the maximum offer upon which the provisional replacement housing payment is based, the difference will be refunded by the homeowner to the public entity. If the acquisition price as determined by the court is less than the maximum offer upon which the provisional replacement housing payment is based, the difference will be paid to the homeowner.

(g) Lease of Condominium. For the purposes of this section, the leasing of a condominium for a 99-year period, or for a term which exceeds the life expectancy of the displaced person as determined by the most recent life tables in Vital Statistics of the United States, as published by the Public Health Service of the Department of Health, Education and Welfare, shall be deemed a purchase of the condominium.

AUTHORITY:

Note: Authority cited: *Section 50460, Health and Safety Code*. Reference: *Section 7263, Government Code*.

HISTORY:

1. Amendment of subsections (a)(1) and (a)(4) and new Note filed 8-12-97; operative 9-11-97 (Register 97, No. 33).

2. Amendment of subsection (e)(2) filed 10-7-99; operative 11-6-99 (Register 99, No. 41).

§ 6104. Replacement Housing Payments for Tenants and Certain Others

(a) General. A public entity shall make to a displaced person who satisfies the eligibility requirements of section 6084 and the conditions of subsection (b) below, a payment not to exceed \$ 5,250 for either:

(1) An amount, computed in accordance with paragraph (d)(1) of this section, necessary to enable such person to lease or rent a replacement dwelling for a period not to exceed 42 months<sup>2</sup>; or

(2) An amount, computed in accordance with paragraph (d)(2) of this section, necessary to enable such person to make a downpayment on the purchase of a replacement dwelling (including incidental expenses described in section 6102).

(b) Eligibility Conditions.

A displaced person is eligible for the payments specified in subsection (a) if he satisfies the following conditions:

(1) Has occupied the dwelling from which he is displaced for a period of not less than 90 days prior to the initiation of negotiation for acquisition of such dwelling.

(2) Is not eligible to receive a replacement housing payment for homeowners under section 6102 or elects not to receive such payment. Where the displaced person is the owner-occupant of the dwelling, the payment made under paragraph 6104(a)(2) shall not exceed the amount of payment to which the person would be eligible under section 6102.

(3) Whenever a payment under subsection (a)(2) is sought the displaced person shall within one year from the date of replacement purchase and occupy a replacement dwelling.

(c) The provisions in subsection 6102(b) for modifying the conditions of eligibility also apply to this section.

(d) Computation of Payment.

(1) Rentals. Except for projects commenced prior to January 1, 1998 (see footnotes 1 and 2) the amount of payment necessary to lease or rent a comparable replacement dwelling, under subsection (a)(1), shall be computed by subtracting 42 times the base monthly rental of the displaced person (as determined in accordance with this subsection), from 42 times the monthly rental for a comparable replacement dwelling (as determined in accordance with this subsection): Provided, that in no case may such amount exceed the difference between 42 times the base monthly rental as determined in accordance with this subsection and 42 times the monthly rental actually required for the replacement dwelling occupied by the displaced person.

(A) Base Monthly Rental. The base monthly rental shall be the lesser of the average monthly rental paid by the displaced person for the 3-month period prior to initiation of negotiations or 30 percent of the displaced person's average monthly income. (See subsection 6008(1).) Where the displaced person was the owner of the dwelling from which he was displaced or was not required to pay rent for that dwelling, the economic rent (see subsection 6008(h)) shall be used in lieu of the average monthly rental to calculate base monthly rental.

(B) Comparable Rental. The monthly rental for a comparable replacement dwelling shall be the amount of rent determined by the public entity by one of the methods described in paragraph 6102(c)(1), considering rental charges instead of listing price or acquisition cost.

(C) Whichever method is selected the cost shall be updated to within three months of the date of rental of the replacement dwelling.

(2) Downpayment. The downpayment for which a payment specified under paragraph (a)(2) of this section may be made, shall not exceed the amount of a reasonable downpayment for the purchase of a comparable replacement dwelling where such purchase is financed, plus expenses incident to the purchase of a replacement dwelling computed in accordance with Section 6102. The full amount of a downpayment under this section shall be applied to the purchase of the replacement dwelling and shall be shown on the closing statement or other document acceptable to the public entity.

(e) Rental Payments for Displaced Owners and Dependents.

(1) Owners. A displaced owner who elects to rent rather than purchase a replacement dwelling and who meets the eligibility conditions specified in subsection (b) is eligible for the payment specified in paragraph (a)(1).

(2) Dependents. A dependent who is residing separate and apart from the person or family providing support, whether such separate residence is permanent or temporary, shall be entitled to payment under this section, but such payment shall be limited to the period during which the displaced dependent resides in the replacement dwelling. At the time the displaced dependent vacates that dwelling, no further payment under this section shall be made to such person. For the purposes of this paragraph a 'dependent' shall be a person who derives fifty-one percent or more of his income in the form of gifts from any private person or any academic scholarship or stipend. Full-time students shall be presumed to be dependents but may rebut this presumption by demonstrating that fifty percent or more of their income is derived from sources other than gifts from another private person or academic scholarships or stipends.



Dependents residing with the family of which they are a part shall not be entitled to any payment except as a part of the family.

(f) Disbursement. Except where specifically provided otherwise, the public entity shall have the authority to disburse payments under this section in a lump sum, monthly or at other intervals acceptable to the displaced person.

.....

2For those who, pursuant to the criteria set forth in *Government Code* section 7260(i)(3)(A) through (J), would have qualified as a "displaced person" prior to January 1, 1998, benefits shall be provided for 48 months provided they do not exceed \$ 5,250.

#### AUTHORITY:

Note: Authority cited: *Section 50460, Health and Safety Code*. Reference: *Sections 7260(i) and 7264, Government Code*.

#### HISTORY:

1. Amendment of subsections (a), (a)(2), (d)(1), (d)(1)(A) and (d)(2) and new Note filed 8-12-97; operative 9-11-97 (Register 97, No. 33).
2. Amendment of subsection (a)(1) and (d)(1)-(d)(1)(A) filed 10-7-99; operative 11-6-99 (Register 99, No. 41).

#### § 6106. Proration of Payments

For the purpose of calculating an alternate payment under section 6098 or a replacement housing payment under section 6102 or 6104, two or more individuals (whether they are members of one family or not) living together in and displaced from a single dwelling shall be regarded as one person.

Where a tenant is sharing a single-family dwelling with an owner-occupant and paying the owner-occupant rent for the privilege, the tenant shall not be entitled to more than one-half of the rental supplement otherwise payable. The owner-occupant shall not be required to share the payment to which he is entitled or accept a prorated amount.

#### HISTORY:

1. Amendment filed 11-5-76 as an emergency; designated effective 11-27-76 (Register 76, No. 44).
2. Certificate of Compliance filed 2-16-77 (Register 77, No. 8).

#### § 6108. Condition of Replacement Dwelling

(a) When a displaced person qualifies for a replacement housing payment (under section 6102 or 6104) by purchasing or renting a replacement dwelling, the unit, as a general rule, must be decent, safe and sanitary. There are three exceptions. One is described in paragraph 6040(a)(6). The others are:

- (1) If the purchase of such a dwelling is the result of the public entity's failure to identify a reasonable number of comparable replacement dwellings as required or if the dwelling is one to which the person was referred by the public entity, the condition of the dwelling does not affect eligibility for a replacement housing payment.
  - (2) If the purchase of such a dwelling is not the result of a public entity's referral or failure to refer, the otherwise eligible person qualifies for a replacement housing payment if the unit is brought into compliance with the decent, safe and sanitary standard. In this situation payment shall be limited to the amount that would be provided in connection with the purchase of a similar, comparable replacement dwelling or the sum of the actual costs of acquisition (including related expenses) and rehabilitation, whichever is less.
- (b) A public entity shall not induce or encourage a displaced person to acquire a dwelling which does not satisfy the comparable replacement housing standard. (See section 6008(c).)

#### § 6110. Certificate of Eligibility

Upon request by a displaced homeowner or tenant who has not yet purchased and occupied a replacement dwelling, but who is otherwise eligible for a replacement housing payment, the public entity concerned shall certify to any interested party, financial institution, or lending agency, that the displaced homeowner or tenant will be eligible for the payment of a specific sum if he purchases and occupies a dwelling within the time limits prescribed.

#### § 6112. Manufactured Homes and Mobilehomes

(a) General. A manufactured home or mobilehome is a dwelling. (See subsection 6008(g).) A person displaced from a manufactured home or mobilehome must satisfy the same eligibility requirements and must be provided the same assistance, assurance and payments as a person displaced from a conventional dwelling.

(b) Moving Expenses. If a manufactured home or mobilehome is moved to another site, the displaced person shall be compensated for moving expenses in accordance with sections 6090 and 6092. The provisions of these sections which generally apply only to businesses and farms shall also apply to displaced persons who move a manufactured home or mobilehome.

##### (c) Replacement Housing Payments.

(1) A person who owns a manufactured home or mobilehome and site and as a replacement purchases both a dwelling and site shall be provided a replacement housing payment in accordance with section 6102. A person who owns a manufactured home or mobilehome and site, and as a replacement rents both a dwelling and site, shall be provided a payment in accordance with section 6104.

(2) A person who rents a manufactured home or mobilehome and site, and as a replacement rents or purchases a dwelling and site, shall be provided a payment in accordance with section 6104.

(3) A person who owns a manufactured home or mobilehome and site, and as a replacement purchases a dwelling and rents a site, shall be provided a payment in accordance with sections 6102 and 6104. The payment shall be limited to the lesser of:

(A) The amount necessary to purchase a conventional comparable replacement manufactured home and mobilehome; or

(B) The amount necessary to purchase a replacement manufactured home or mobilehome (in accordance with section 6102) plus the amount necessary to rent a replacement site (in accordance with section 6104). In calculating this amount, the economic rent for the site shall be used in lieu of average monthly rental to determine the base monthly rental (as provided in paragraph 6104(d)(1)).

(4) A person who owns a site from which he moves a manufactured home or mobilehome shall be provided a replacement housing payment under section 6102 if he purchases a replacement site and under section 6104 if he rents a replacement site.

(5) A person who owns a manufactured home or mobilehome which is acquired and rents the site shall be provided payment as follows:

(A) If a manufactured home or mobilehome, as appropriate, is not available the amount required to purchase a conventional replacement dwelling (in accordance with section 6102);

(B) The amount necessary to purchase a replacement manufactured home or mobilehome (in accordance with section 6102) plus the amount necessary to lease, rent or make a downpayment on a replacement site (in accordance with section 6104); or

(C) If he elects to rent a replacement manufactured home or mobilehome and site, the amount required to do so in accordance with section 6104. In calculating this payment, the average monthly rental shall equal the economic rent for the manufactured home or mobilehome plus the actual rent for the site.

(6) Similar principles shall be applied to other possible combinations of ownership and tenancy upon which a claim for payment might be based.

## AUTHORITY:

Note: Authority cited: *Section 50460, Health and Safety Code*. Reference: *Sections 18007 and 18008, Health and Safety Code*.

## HISTORY:

1. Amendment of section and new Note filed 8-12-97; operative 9-11-97 (Register 97, No. 33).

## § 6114. Affected Property

(a) In addition to the payments required by Section 7262 of the Act (see sections 6090, 6092, 6094, 6096, 6098 and 6100), as a cost of acquisition, the public entity shall make a payment to any affected property owner meeting the requirements of this section.

(b) Such affected property is immediately contiguous to property acquired for airport purposes and the owner shall have owned the property affected by acquisition by the public entity not less than 180 days prior to the initiation of negotiation for acquisition of the acquired property.

(c) Such payment, not to exceed fifteen thousand dollars (\$ 22,500), shall be the amount, if any, which equals the actual decline in the fair market value of the property of the affected property owner caused by the acquisition by the public entity for airport purposes of other real property and a change in the use of such property.

(d) The amount, if any, of actual decline in fair market value of affected property shall be determined according to rules and regulations adopted by the public entity. Such rules and regulations shall limit payment under this section only to such circumstances in which the decline in fair market value of affected property is reasonably related to objective physical change in the use of acquired property.

(e) "Affected property" means any real property which actually declines in fair market value because of acquisition by a public entity for public use of other real property and a change in the use of the real property acquired by the public entity.

## HISTORY:

1. Amendment of subsection (c) filed 10-7-99; operative 11-6-99 (Register 99, No. 41).

## § 6120. Purpose

The purpose of this part is to set forth the criteria and procedures for assuring that if the action of a public entity results, or will result in displacement, and comparable replacement housing will not be available as needed, the public entity shall use its funds or funds authorized for the project to provide such housing.

## § 6122. Determination of Need for Last Resort Housing

If on the basis of data derived from surveys and analyses which satisfy the requirements of sections 6048 and 6052, the public entity is unable to demonstrate that comparable replacement housing will be available as required, the head of the public entity shall determine whether to use the public entity's funds or the funds authorized for the project to provide such necessary replacement housing or to modify, suspend or terminate the project or undertaking.

## § 6124. Development of Replacement Housing Plan

## (a) General.

(1) Following the determination pursuant to section 6122, the head of the displacing public entity shall develop or cause to be developed a replacement housing plan to produce a sufficient number of comparable replacement dwellings.

The plan shall specify how, when and where the housing will be provided, how it will be financed and the amount of funds to be diverted to such housing, the prices at which it will be rented or sold to the families and individuals to be displaced, the arrangements for housing management and social services as appropriate, the suitability of the location and environmental impact of the proposed housing, the arrangements for maintaining rent levels appropriate for the persons to be rehoused, and the disposition of proceeds from rental, sale, or resale of such housing. If a referendum requirement or zoning presents an obstacle, the issue shall be addressed.

(2) All contracts and subcontracts for the construction, rehabilitation or management of last resort housing shall be let without discrimination as to race, sex, marital status, color, religion, national origin, ancestry or other arbitrary circumstance and pursuant to an affirmative action program. The public entity shall encourage participation by minority persons in all levels of construction, rehabilitation, planning, financing and management of last resort housing. When the housing will be located in an area of minority concentration, the public entity shall seek to secure significant participation of minorities in these activities. The public entity shall require that, to the greatest extent feasible, opportunities for training and employment arising in connection with the planning, construction, rehabilitation, and operation of last resort housing be given to persons of low income residing in the area of such housing and shall determine and implement means to secure the participation of small businesses in the performance of contracts for such work.

(b) Citizen Participation.

(1) If the need for last resort housing exceeds 25 units, the head of the displacing public entity shall establish a committee which will consult with and provide advice and assistance to the displacing public entity in the development of the plan. The committee should include appointed representatives of the displacing entity and state and local agencies knowledgeable regarding housing in the area, including but not limited to the local housing authority and the central relocation agency, if any. In addition, the committee should include representatives of other appropriate public groups (for example, local and areawide planning agencies) and private groups knowledgeable regarding housing and the problems of housing discrimination.

(2) The committee shall include representatives of the residents to be displaced. These representatives may be appointed by the displacing entity or elected by the residents, as the residents wish. Resident representatives shall, at a minimum, constitute one-third of the committee membership. Votes shall be allocated so that the total votes of resident representatives shall equal one-half of the total votes of the committee membership.

(3) The plan must be approved by the vote of a simple majority of the committee membership. In the event the committee fails to approve the plan, the local governing body or, where the displacing entity is a state agency, the head of the state agency may substitute its approval.

(c) Consultation with Other Housing Agencies and Organizations.

The head of the displacing public entity may consult or contract with the department, a local housing authority, or other agency or organization having experience in the administration or conduct of housing programs to provide technical assistance and advice in the development of the replacement housing plan.

§ 6126. Submission of Plan for Comment

The head of the displacing public entity shall submit the plan and all significant amendments to the local housing and planning agencies for comment and to assure that the plan accurately reflects housing conditions and needs in the relocation area. Reviewing agencies shall have 30 calendar days following receipt of the plan to prepare their comments. Copies of all comments received shall be forwarded to the committee and available to all interested persons.

General notice of the plan shall be provided. Notice shall be designed to reach the residents of the relocation area; it shall be in accordance with the provisions of paragraph 6046(a)(3) and subsection 6046(b); and it shall be provided 30 days prior to submission to the committee, or the local governing body or head of state agency for approval.

AUTHORITY:

Note: Authority cited: *Section 50460, Health and Safety Code*. Reference: *Sections 7260.5(a)(5) and 7264.5, Government Code*.

## HISTORY:

1. Amendment of first paragraph and new Note filed 8-12-97; operative 9-11-97 (Register 97, No. 33).

§ 6128. Determination by Displacing Public Entity of Feasibility and Compliance

Upon receipt and consideration of the comments, the displacing public entity shall determine whether or not:

- (a) The plan is feasible.
- (b) The plan complies with applicable environmental standards and procedures.
- (c) The plan is compatible with the local general plan and housing element and the areawide housing plan or strategy.

If any of the above determinations by the displacing public entity is negative the displacing public entity shall revise the plan as necessary. Substantial modifications in the plan shall be submitted for review and comment as provided in section 6126. If necessary for timely implementation of the plan or execution of the project, the head of the displacing public entity may shorten the time allowed in section 6126 for review of modifications.

§ 6130. Implementation of the Replacement Housing Plan

Upon making the determinations required by section 6128, the head of the displacing entity may expend funds and take such other actions as necessary to provide, rehabilitate, or construct replacement housing pursuant to the approved replacement housing plan through methods including but not limited to the following:

- (a) Transfer of funds to state and local housing agencies.
- (b) Contract with organizations experienced in the development of housing.
- (c) Direct construction by displacing public entity.

Whenever practicable, the head of the displacing public entity should utilize the services of federal, state, or local housing agencies, or other agencies having experience in the administration or conduct of similar housing programs.

§ 6132. Housing Production

The head of the displacing public entity shall monitor the production of the last resort housing to ensure that it is in accordance with the plan.

§ 6134. Jointly Sponsored Development

Where several agencies are administering programs resulting in residential displacement, opportunities shall be sought for joint development and financing to aggregate resources in order most efficiently to provide replacement housing in sufficient quantity to satisfy the aggregate needs of such programs.

§ 6136. Last Resort Housing in Lieu of Payments

A public entity shall not require a displaced person to accept a dwelling provided pursuant to this Article in lieu of the displaced person's acquisition payment, if any, for the real property from which he is displaced or the relocation payments for which he may be eligible.

§ 6138. Conformity with the Act and Other Statutes, Policies and Procedures

(a) Civil Rights and Other Acts. The administration of this Article shall be in accord with the provisions of all applicable federal and state non-discrimination laws and regulations issued pursuant thereto.

(b) Dwelling and Relocation Standards. Determinations made pursuant to section 6122 and any plan developed and implemented for providing replacement housing and all such housing provided thereunder shall be in conformity with the standards established in the Act and Guidelines.

**AUTHORITY:**

Note: Authority cited: *Section 50460, Health and Safety Code*. Reference: *Section 7260.5(c)(4), Government Code*.

**HISTORY:**

1. Amendment of subsection (a) and new Note filed 8-12-97; operative 9-11-97 (Register 97, No. 33).

**§ 6139. Last Resort Housing**

(a) Whenever comparable replacement dwellings are not available, or are not available within the monetary limits of *Government Code* sections 7263 and 7264, as appropriate, the displacing agency shall provide additional or alternative assistance under the provisions of this part.

(b) The methods of providing replacement housing of last resort include, but are not limited to:

(1) A replacement housing payment calculated in accordance with the provisions of sections 6102 or 6104, as appropriate, even if the calculation is in excess of the monetary limits of *Government Code* sections 7263 and 7264. A rental assistance payment under this part shall be paid to the displaced person in a lump sum, or at the discretion of the displacing agency, \$ 5,250 shall be paid to the displaced person in a lump sum upon displacement and the remainder of the payments shall be paid to the displacee in periodic payments over a period not to exceed 42 months unless otherwise specified by statute.

(2) Major rehabilitation of and/or additions to an existing replacement dwelling in a sum equal to or greater than the payment to which the displaced person is entitled under subsection (b)(1).

(3) The construction of a new replacement dwelling in a sum equal to or greater than the payment to which the displaced person is entitled under subsection (b)(1) of this section.

(4) The relocation and, if necessary, rehabilitation of a dwelling.

(5) The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with a displaced person.

(6) For purposes of accommodating the needs of handicapped persons, the removal of barriers to the handicapped.

(c) Only at the discretion of displacing agencies are post-acquisition tenants entitled to last resort housing payments.

**AUTHORITY:**

Note: Authority cited: *Section 50460, Health and Safety Code*. Reference: *Sections 7263, 7264 and 7264.5, Government Code*.

**HISTORY:**

1. New section filed 8-12-97; operative 9-11-97 (Register 97, No. 33).

2. Amendment of subsection (b)(1) filed 10-7-99; operative 11-6-99 (Register 99, No. 41).

**§ 6150. Purpose**

The purpose of this article is to set forth guidelines for processing appeals from public entity determinations as to eligibility, the amount of payment, and for processing appeals from persons aggrieved by a public entity's failure to refer



them to comparable permanent or adequate temporary replacement housing. Public entities shall establish procedures to implement the provisions of this Article.

#### § 6152. Right of Review

(a) Any complainant, that is any person who believes himself aggrieved by a determination as to eligibility, the amount of payment, the failure of the public entity to provide comparable permanent or adequate temporary replacement housing or the public entity's property management practices may, at his election, have his claim reviewed and reconsidered by the head of the public entity or an authorized designee (other than the person who made the determination in question) in accordance with the procedures set forth in this article, as supplemented by the procedures the public entity shall establish for such review and reconsideration.

(b) A person or organization directly affected by the relocation plan may petition the department to review the final relocation plan of a public entity to determine if the plan is in compliance with state laws and guidelines or review the implementation of a relocation plan to determine if the public entity is acting in compliance with its relocation plan. Review undertaken by the department under this section shall be in accordance with the provisions of sections 6158 and may be informal. Before conducting an investigation, the department should attempt to constrain disputes between parties.

Failure to petition the department shall not limit a complainant's right to seek judicial review.

(c) If a relocation appeals board has been established pursuant to *Section 33417.5 of the Health and Safety Code*, a city by ordinance may designate the board to hear appeals from local public entities which do not have an appeal process. In the absence of such an ordinance, public entities shall establish procedures to implement the provisions of this Article.

#### AUTHORITY:

Note: Authority cited: *Section 50460, Health and Safety Code*. Reference: *Section 7266, Government Code*.

#### HISTORY:

1. Amendment of subsection (b) and new Note filed 8-12-97; operative 9-11-97 (Register 97, No. 33).

#### § 6154. Notification to Complainant

If the public entity denies or refuses to consider a claim, the public entity's notification to the complainant of its determination shall inform the complainant of its reasons and the applicable procedures for obtaining review of the decision. If necessary, such notification shall be printed in a language other than English in accordance with section 6046.

#### § 6156. Stages of Review by a Public Entity

(a) Request for Further Written Information. A complainant may request the public entity to provide him with a full written explanation of its determination and the basis therefore, if he feels that the explanation accompanying the payment of the claim or notice of the entity's determination was incorrect or inadequate. The public entity shall provide such an explanation to the complainant within three weeks of its receipt of his request.

(b) Informal Oral Presentation. A complainant may request an informal oral presentation before seeking formal review and reconsideration. A request for an informal oral presentation shall be filed within the period described in subsection (d) of this section, and within 15 days of the request the public entity shall afford the complainant the opportunity to make such presentation. The complainant may be represented by an attorney or other person of his choosing. This oral presentation shall enable the complainant to discuss the claim with the head of the public entity or a designee (other than the person who made the initial determination) having authority to revise the initial determination on the claim. The public entity shall make a summary of the matters discussed in the oral presentation to be included as part of its file. The right to formal review and reconsideration shall not be conditioned upon requesting an oral presentation.

(c) Written Request for Review and Reconsideration. At any time within the period described in subsection (d) a complainant may file a written request for formal review and reconsideration. The complainant may include in the re-



quest for review any statement of fact within the complainant's knowledge or belief or other material which may have a bearing on the appeal. If the complainant requests more time to gather and prepare additional material for consideration or review and demonstrates a reasonable basis therefor, the complainant's request should be granted.

(d) Time Limit for Requesting Review. A complainant desiring either an informal oral presentation or seeking a formal review and reconsideration shall make a request to the public entity within eighteen months following the date he moves from the property or the date he receives final compensation for the property, whichever is later.

#### § 6158. Formal Review and Reconsideration by the Public Entity

(a) General. The public entity shall consider the request for review and shall decide whether a modification of its initial determination is necessary. This review shall be conducted by the head of the public entity or an authorized, impartial designee. (The designee may be a committee). A designee shall have the authority to revise the initial determination or the determination of a previous oral presentation. The public entity shall consider every aggrieved person's complaint regardless of form, and shall, if necessary provide assistance to the claimant in preparing the written claim. When a claimant seeks review, the public entity shall inform him that he has the right to be represented by an attorney, to present his case by oral or documentary evidence, to submit rebuttal evidence, to conduct such cross-examination as may be required for a full and true disclosure of facts, and to seek judicial review once he has exhausted administrative appeal.

(b) Scope of Review. The public entity shall review and reconsider its initial determination of the claimant's case in light of:

(1) All material upon which the public agency based its original determination including all applicable rules and regulations, except that no evidence shall be relied upon where a claimant has been improperly denied an opportunity to controvert the evidence or cross-examine the witness.

(2) The reasons given by the claimant for requesting review and reconsideration of the claim.

(3) Any additional written or relevant documentary material submitted by the claimant.

(4) Any further information which the public entity in its discretion, obtains by request, investigation, or research, to ensure fair and full review of the claim.

(c) Determination on Review by Public Entity.

(1) The determination on review by the public entity shall include, but is not limited to:

(A) The public entity's decision on reconsideration of the claim.

(B) The factual and legal basis upon which the decision rests, including any pertinent explanation or rationale.

(C) A statement to the claimant of the right to further administrative appeal, if the public entity has such an appeal structure, or if not, a statement to the claimant that administrative remedies have been exhausted and judicial review may be sought.

(2) The determination shall be in writing with a copy provided to the claimant.

(d) Time Limits.

(1) The public entity shall issue its determination of review as soon as possible but no later than 6 weeks from receipt of the last material submitted for consideration by the claimant of the date of the hearing, whichever is later.

(2) In the case of complaints dismissed for untimeliness or for any other reason not based on the merits of the claim, the public entity shall furnish a written statement to the claimant stating the reason for the dismissal of the claim as soon as possible but no later than 2 weeks from receipt of the last material submitted by the claimant or the date of the hearing, whichever is later.

#### § 6160. Refusals to Waive Time Limitation

Whenever a public entity rejects a request by a claimant for a waiver of the time limits provided in section 6088, a claimant may file a written request for review of this decision in accordance with the procedures set forth in sections 6156 and 6158, except that such written request for review shall be filed within 90 days of the claimant's receipt of the public entity's determination.

#### § 6162. Extension of Time Limits

The time limits specified in Section 6156 may be extended for good cause by the public entity.

#### § 6164. Recommendations by Third Party

Upon agreement between the claimant and the public entity, a mutually acceptable third party or parties may review the claim and make advisory recommendations thereon to the head of the public entity for its final determination. In reviewing the claim and making recommendations to the public entity, the third party or parties shall be guided by the provisions of this Article.

Except to the extent the confidentiality of material is protected by law or its disclosure is prohibited by law, a public entity shall permit the claimant to inspect all files and records bearing upon his claim or the prosecution of the claimant's grievance. If a claimant is improperly denied access to any relevant material bearing on the claim, such material may not be relied upon in reviewing the initial determination.

#### § 6166. Review of Files by Claimant

Except to the extent the confidentiality of material is protected by law or its disclosure is prohibited by law, a public entity shall permit the claimant to inspect all files and records bearing upon his claim or the prosecution of the claimant's grievance. If a claimant is improperly denied access to any relevant material bearing on the claim, such material may not be relied upon in reviewing the initial determination.

#### § 6168. Effect of Determination on Other Persons

The principles established in all determinations by a public entity shall be considered as precedent for all eligible persons in similar situations regardless of whether or not a person has filed a written request for review. All written determinations shall be kept on file and available for public review.

#### § 6170. Right to Counsel

Any aggrieved party has a right to representation by legal or other counsel at his expense at any and all stages of the proceedings set forth in these sections.

#### § 6172. Stay of Displacement Pending Review

If a complainant seeks to prevent displacement, the public entity shall not require the complainant to move until at least 20 days after it has made a determination and the complainant has had an opportunity to seek judicial review. In all cases the public entity shall notify the complainant in writing 20 days prior to the proposed new date of displacement.

#### § 6174. Joint Complainants

Where more than one person is aggrieved by the failure of the public entity to refer them to comparable permanent or adequate temporary replacement housing the complainants may join in filing a single written request for review. A determination shall be made by the public entity for each of the complainants.

#### § 6176. Judicial Review

Nothing in this Article shall in any way preclude or limit a claimant from seeking judicial review of a claim upon exhaustion of such administrative remedies as are available under this Article.

§ 6180. Purpose

The purpose of this Article is to set forth the practices to be followed with respect to acquisition of real property by a public entity. Public entities shall, to the greatest extent practicable, be guided by these practices.

§ 6182. Acquisition

(a) A public entity shall make every reasonable effort to acquire property by negotiation and to do so expeditiously.

(b) Before negotiations are initiated (see subsection 6008(n)) a public entity shall:

(1) Have the property appraised, giving the owner or his representative designated in writing an opportunity, by reasonable advance written notice, to accompany the appraiser during the inspection of the property;

(2) If the owner of real property is also the owner of a business conducted on the real property to be acquired or on the remainder, inform him of his possible right to compensation for loss of goodwill. The public entity should include a copy of the pertinent provisions of the Eminent Domain Law (*Code of Civil Procedure Sections 1230.010 et seq.*).

(3) Establish an amount it believes to be just compensation for the property, which amount shall, in no event, be less than the public entity's approved appraisal of the fair market value of the property as improved.

(c) The determination of just compensation shall be based upon consideration of:

(1) The real property being acquired;

(2) Where the real property acquired is part of a larger parcel, the injury, if any, to the remainder; and

(3) Loss of goodwill, where the owner of the real property is also the owner of a business conducted upon the property to be acquired or on the remainder and where the provisions of the Eminent Domain Law pertaining to compensation for loss of goodwill are satisfied. Goodwill consists of the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage.

(d) As soon as possible after the amount of just compensation is established, the public entity shall offer to acquire the property for the full amount so established and shall provide the owner with a written statement of the basis for determination of just compensation. The statement shall include the following:

(1) A general statement of the public use for which the property is to be acquired.

(2) A description of the location and extent of the property to be taken, with sufficient detail for reasonable identification, and the interest to be acquired.

(3) An inventory identifying the buildings, structures, fixtures, and other improvements.

(4) A recital of the amount of the offer and a statement that such amount:

(A) Is the full amount believed by the public entity to be just compensation for the property taken;

(B) Is not less than the approved appraisal of the fair market value of the property as improved;

(C) Disregards any decrease or increase in the fair market value of the real property to be acquired prior to the date of valuation caused by the public improvement for which the property is to be acquired for such public improvement, other than that due to physical deterioration within the reasonable control of the owner or occupant; and

(D) Does not reflect any consideration of or allowance for any relocation assistance and payments or other benefits which the owner is entitled to receive under an agreement with the public entity, except for an amount to compensate the owner for that portion of loss of goodwill provided in accordance with Section 6100.

(5) If the real property is a portion of a larger parcel, the statement shall include an apportionment of the total estimated just compensation for the partial acquisition between the value of the property being taken and the amount of damage, if any, to the remainder of the larger parcel from which such property is taken.

(6) If the owner of the real property to be acquired is also the owner of a business conducted upon the property or the remainder, the statement shall include an indication of the amount of compensation for loss of goodwill.

(e) At the initiation of negotiations (see subsection 6008(n)) a public entity shall provide written notification to the owner of a business conducted on the real property to be acquired or on the remainder, who is not also the owner of the real property, concerning his possible right to compensation for loss of goodwill. The public entity should include a copy of the pertinent provisions of the Eminent Domain Law (*Code of Civil Procedure, Section 1230.010 et seq.*).

(f) (1) If after receiving the public entity's offer the owner requests additional information regarding the determination of just compensation, the public entity shall provide the following information to the extent that the determination of just compensation is based thereon:

- (A) The date of valuation used.
- (B) The highest and best use of the property.
- (C) The applicable zoning.
- (D) Identification of some of the sales, contracts to sell and purchase, and leases supporting the determination of value.

(E) If the property is a portion of a larger parcel, a description of the larger parcel, with sufficient detail for reasonable identification.

(2) With respect to each sale, contract, or lease provided in accordance with (1)(D) above, the following data should be provided:

- (A) The names and business or residence addresses, if known, of the parties to the transaction.
- (B) The location of the property subject to the transaction.
- (C) The date of transaction.
- (D) The price and other significant terms and circumstances of the transaction, if known. In lieu of stating the other terms and circumstances, the public entity may, if the document is available for inspection, state the place where and the times when it is available for inspection.
- (3) The requirements of this subsection do not apply to requests made after an eminent domain proceeding is commenced.

(g) Whenever a part of a parcel of property is to be acquired by a public entity for public use and the remainder, or a portion of the remainder, will be left in such size, shape or condition as to constitute an uneconomic remnant the public entity shall offer to acquire the remnant if the owner so desires. For the purposes of these Guidelines an "uneconomic remnant" shall be a parcel of real property in which the owner retains an interest after partial acquisition of his property and which has little or no utility or value to such owner. (Nothing in this subsection is intended to limit a public entity's authority to acquire real property.)

(h) Nothing in this section shall be construed to deprive a tenant of the right to obtain payment for his property interest as otherwise provided by law.

(i) (1) Prior to commencement of an eminent domain proceeding the public entity shall make reasonable efforts to discuss with the owner its offer to purchase the owner's real property. The owner shall be given a reasonable opportunity to present material which he believes to be relevant as to the question of value and to suggest modification in the proposed terms and conditions of the purchase, and the public entity shall carefully consider the owner's presentation.

(2) Prior to commencement of an eminent domain proceeding, if the evidence presented by an owner or a material change in the character or condition of the property indicates the need for a new appraisal or if a significant delay has occurred since the determination of just compensation, the public entity shall have its appraisal updated. If a modification in the public entity's determination of just compensation is warranted, an appropriate price adjustment shall be made and the new amount determined to be just compensation shall be promptly offered in writing to the owner.

(j) (1) In no event shall the public entity either advance the time of condemnation, or defer negotiations or condemnation on the deposit of funds in court for the use of the owner, or take any other action coercive or misleading in nature, in order to compel or induce an agreement on the price to be paid for the property.

(2) If any interest in property is to be acquired by exercise of the power of eminent domain, the public entity shall promptly institute formal condemnation proceedings. No public entity shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of this real property.

#### § 6184. Notice of Decision to Appraise

The public entity shall provide the owner with written notice of its decision to appraise the real property as soon as possible after the decision to appraise has been reached. The notice shall state, as a minimum, that:

- (a) A specific area is being considered for a particular public use;
- (b) The owner's property has been determined to be located within the area; and
- (c) The owner's property, which shall be generally described, may be acquired in connection with the public use.

#### § 6186. Time of Offer

The public entity shall make its first written offer as soon as practicable following service of the Notice of Decision to Appraise. (See section 6184.)

#### § 6188. Notice of Land Acquisition Procedures

(a) At the time the public entity notifies an owner of its decision to appraise real property it shall furnish the owner a written explanation of its land acquisition procedures, describing in non-technical, understandable terms the public entity's acquisition procedures and the principal rights and options available to the owner.

(b) The notice shall include the following:

- (1) A description of the basic objective of the public entity's land acquisition program and a reference to the availability of the public entity's statement covering relocation benefits for which an owner-occupant may be eligible;
- (2) A statement that the owner or his representative designated in writing shall be given the opportunity to accompany each appraiser during his inspection of the property.
- (3) A statement that if the acquisition of any part of real property would leave the owner with an uneconomic remnant as defined in subsection 6182(g) the public entity will offer to acquire the uneconomic remnant; if the owner so desires;
- (4) A statement that if the owner is not satisfied with the public entity's offer of just compensation he will be given a reasonable opportunity to present relevant material, which the public entity will carefully consider, and that if a voluntary agreement cannot be reached the public entity, as soon as possible, will either institute a formal condemnation proceeding against the property or abandon its intention to acquire the property, giving notice of the latter as provided in section 6190.
- (5) A statement that construction or development of a project shall be so scheduled that no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by these Guidelines will be available) or to move his business or farm operation without at least 90 days written notice from the public entity of the date by which the move is required; and
- (6) A statement that, if arrangements are made to rent the property to an owner or his tenant for a short term or for a period subject to termination by the public entity on short notice, the rental will not exceed the lesser of the fair rental value of the property to short term occupier or the pro rata portion of the fair rental value for a typical rental period.

If the owner or tenant is an occupant of a dwelling, the rental for the dwelling shall be within his financial means. (See subsection 6008(c).)

#### § 6190. Notice of Public Entity's Decision Not to Acquire

Whenever a public entity which has forwarded a Notice of Decision to Appraise or has made a firm offer subsequently decides not to acquire the property, the public entity shall serve a notice in writing on the owner, all persons

occupying the property and all other persons potentially eligible for relocation payments and assistance. This notice shall state that the public entity has decided not to acquire the property. It shall be served not later than 10 days following the date of the public entity decision not to acquire.

#### § 6192. Incidental Expenses

If the real property is acquired by purchase, the public entity shall pay all reasonable expenses incident to transfer. Among the expenses requiring payment are: recording fees, transfer fees and similar expenses incident to the conveyance of real property, and the pro rata portion of charges for public service such as water, sewage and trash collection which are allowable to a period subsequent to the date of transfer of title to the public entity or the effective date of possession of such property by the public entity, whichever is earlier. The public entity shall inform the owner that he may apply for a rebate of the pro rata portion of any real property taxes paid.

#### HISTORY:

1. Amendment filed 11-5-76 as an emergency; designated effective 11-27-76 (Register 76, No. 44).
2. Certificate of Compliance filed 2-16-77 (Register 77, No. 8).

#### § 6194. Short Term Rental

(a) If the public permits an owner or tenant to occupy the real property acquired on a rental basis for a short-term or for a period subject to termination by the public entity on short notice, the amount of rent required shall not exceed the lesser of the fair rental value to a short-term occupier or the pro rata portion of the fair rental value for a typical rental period.

If the owner or tenant is an occupant of a dwelling, the rental for the dwelling shall be within his financial means. (See subsection 6008(c).)

(b) A post-acquisition tenant who occupies real property acquired on a rental basis for a short term and who is informed that the property has been acquired for a public use shall be given not less than 30 days notice of termination of the tenancy.

#### HISTORY:

1. Amendment of subsection (b) filed 11-5-76 as an emergency; designated effective 11-27-76 (Register 76, No. 44).
2. Certificate of Compliance filed 2-16-77 (Register 77, No. 8).

#### § 6195. Public Information

The purchase price and other consideration paid by the public entity is public information and shall be made available upon request.

#### § 6196. Service of Notice

Service of all notices required by this article shall be made either by first class mail or by personal service upon the person to be notified.

#### § 6198. Nonpossessory Interest Exception

The provisions of 6182(b), (c), (d)(4), and (f) and 6188 shall not apply to the acquisition of any easement, right-of-way, covenant or other nonpossessory interest in real property to be acquired for the construction, reconstruction, alteration, enlargement, maintenance, renewal, repair or replacement of sub-surface sewers, waterlines or appurtenance, drains, septic tanks, or storm water drains.

Attachment A  
Minimum Contents of Informational Statement(s)

[See Table In Original]

AUTHORITY:

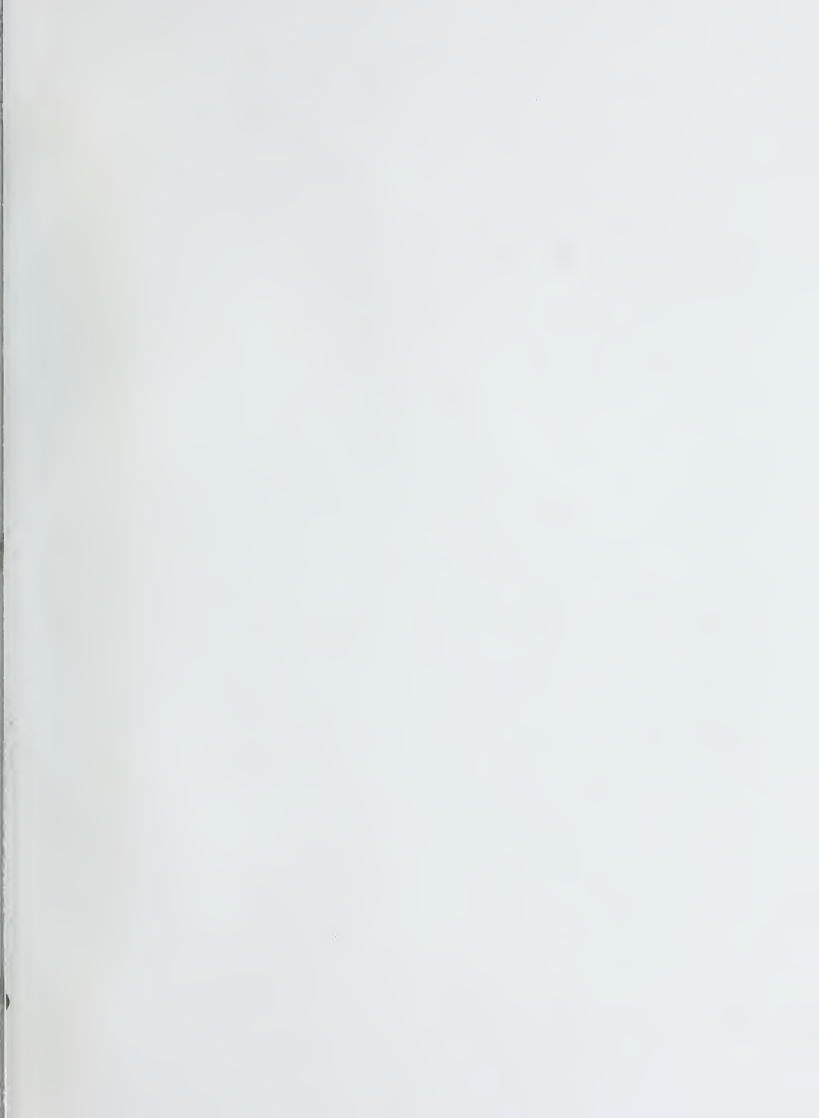
Note: Authority cited: Sections 41226 and 50626, Health and Safety Code. Reference: *Sections 41220-41229 and 50625-50629, Health and Safety Code.*

HISTORY:

1. Renumbering from Chapter 1, Subchapter 4 (Sections 1500-1520, not consecutive) to Chapter 6, Subchapter 2 (Sections 6200-6220, not consecutive) filed 1-28-77 as procedural and organizational; effective upon filing (Register 77, No. 5). For prior history, see Register 76, No. 18.
2. Repealer of Subchapter 2 (Articles 1-2, Sections 6200-6220, not consecutive) filed 6-19-80; effective thirtieth day thereafter (Register 80, No. 25).

























TREASURE ISLAND DEVELOPMENT AUTHORITY  
ONE AVENUE OF THE PALMS,  
2<sup>ND</sup> FLOOR, TREASURE ISLAND  
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Draft Minutes of Meeting  
Treasure Island Development Authority  
February 23, 2011

Room 400, City Hall  
1 Dr. Carlton B. Goodlett Place

Mirian Saez, Director of Island Operations  
Peter Summerville, Commission Secretary

1. Call to Order

1:35 P.M.

GOVERNMENT  
DOCUMENTS DEPT

MAR - 4 2011

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Present

Claudine Cheng, *President*  
Larry Del Carlo  
Mark Dunlop  
Larry Mazzola, Jr.  
Linda Richardson  
Jean-Paul Samaha, *Secretary/Vice-President*

Excused

John Elberling, *Chief Financial Officer*  
Supervisor Jane Kim, *Ex-Officio*

2. General Public Comment

There was no General Public Comment.

3a. Director's Report

Director of Island Operations Mirian Saez deferred her report to the regular March Authority Board meeting.

There was no Public Comment on the Director's Report.

3b. Report by Office of Economic & Workforce Development

Mr. Rich Hillis, Office of Economic and Workforce Development presented a forward schedule on the presentation and approval process for the redevelopment project. A Joint Meeting of the Authority Board and Planning Commission to certify the Environmental Impact Review for the redevelopment plan is calendared for April 7<sup>th</sup>.

There was no Public Comment on the Report by Office of Economic and Workforce Development.

**3c. Report by the Treasure Island/Yerba Buena Island Citizen's Advisory Board (CAB)**  
Karen Knowles-Pearce, Chair of the TI/YBI Citizen Advisory Board (CAB), discussed recent presentations made to the CAB, including the Finance Plan, Open Space Plan and Navy Conveyance. Stated the CAB did take an action on the Owner Participation Rules and Relocation Guidelines, and it was a unanimous approval of both Plans by the CAB.

There was no Public Comment on the Citizen Advisory Board report.

#### **4. Communications**

There was no discussion of the Communications by Directors.

There was no Public Comment on the Communications.

#### **5. Ongoing Business by Directors**

There was no discussion of Ongoing Business by Directors.

There was no Public Comment on the item.

#### **6. Consent Agenda**

Director of Island Operations Saez requested that Item 6A be pulled from the Consent Agenda to allow for a staff report and proposed revision to the resolution language.

#### **6a. Approving and Authorizing (i) the Execution of a First Amendment to the Memorandum of Understanding with the San Francisco Public Utilities Commission for Adjustment of Utility Rates, and (ii) the Adjustment of Utility Rates to Establish an Interruptible Water Rate for Public Uses.**

Mr. Richard Rovetti, Deputy Director of Real Estate, presented a proposed First Amendment to the Memorandum of Understanding with the San Francisco Public Utilities Commission for Adjustment of Utility Rates and the Adjustment of Utility Rates to establish an interruptible water rate for public uses retroactive to July 1, 2010. Utility rates on-Island were initially established by the Navy to defray costs of utility commodities, operations and maintenance. The Navy assigned the Authority, as Caretaker, the responsibility to manage the utility systems in 1998, but continued to set rates through 1999. On October 1, 2000, Modification No. P00013 amended the Cooperative Agreement between the Authority and the Navy to allow the Authority, as Caretaker, to establish uniform rates for utilities on the Island. On October 22, 2008, the Authority's Board of Directors adopted Resolution No. 08-63-10/22 approving the Memorandum of Understanding Regarding Utility Rate Adjustments (the "2008 MOU") between the Authority and the SFPUC to document current utility rates and allow Authority staff and SFPUC staff to work together to review utility rates and to make further recommendations for future utility rate adjustments to the Authority Board. Project Staff and SFPUC have negotiated a First Amendment to the 2008 MOU that will retroactively offer a new interruptible water rate

plan beginning July 1, 2010 for irrigation of open space and recreational areas throughout the Island. This water rate service plan will be available to the Authority and its subtenants that use water to irrigate recreational athletic fields on Island. An interruptible service is when a service, in this case the water provided for irrigation of athletic fields and public open space on-Island, can be interrupted for water shortages and other emergencies at the discretion of the SFPUC Water Enterprise. Water service to residential and commercial facilities on-Island is not part of this adjustment and will not be interrupted. This optional irrigation rate will reduce the Authority's public space irrigation costs and will allow the Authority to offer this service to on-Island tenants who maintain athletic fields.

Mr. Todd Rystrom, Assistant General Manager of the San Francisco Public Utilities Commission, stated this is an instance where the PUC can offer a rate that is beneficial to the Island. It is the same PUC rates allowed for irrigation of golf courses and medians in San Francisco. It is approximately a 40% discount; the causes for interruption are severe droughts where water conservation is necessary.

Director Saez read a proposed amendment to the Resolution language for this item. Staff is proposing that on Page 4, the Whereas clause beginning on Line 10 shall be amended to read in whole:

“WHEREAS, The adoption of the interruptible service rate will benefit the Authority and its applicable Island subtenants by reducing the cost of water for irrigation of public spaces and recreational use from \$5.40 to \$2.41 per hundred cubic feet (“CCF”) or \$3.2219 per kgal, resulting in a cost savings of \$55,000 from July 1, 2010 through December 31, 2010”

Director Mazzola motioned to accept the proposed amendment to the language.

Director Del Carlo seconded the motion.

The motion to accept the proposed amendment to the language was approved unanimously.

There was no Public Comment on the Consent Agenda.

Director Del Carlo motioned for approval as amended.

Director Samaha seconded the motion.

The item was approved unanimously as amended.

## **7. Treasure Island/Yerba Buena Island Redevelopment Project Entitlements and Transaction Documents Presentation.**

Mr. Michael Tymoff, Office of Economic and Workforce Development, presented the draft Parks and Open Space Plan. Discussed the aims and goals of the Parks and Open Space plan within the overall project framework. Discussed related and interconnected project documents including the Design for Development and the function of the Parks and Open Space plan within the framework of these documents. Presented maps indicating typologies for the Plan, proposed Parks and Open Space within each neighborhood within the plan. Discussed Ownership and Maintenance of the various parks and open space areas, development costs and capital costs

associated with the Plan and a map illustrating proposed development phasing of the Parks and Open Space Plan.

Mr. Rich Hillis, Office of Economic and Workforce Development, presented the draft Finance Plan and U.S. Navy Economic Development Conveyance agreement document. Presented the projects general financing goals and requirements, overview of the sources of funding including private capital from land sales, developer equity and debt and tax-exempt financing such as Mello-Roos bonds and tax allocation bonds from tax-increment financing. Presented anticipated levels of funding from these different sources, as well as anticipated allocation of this funding project-wide.

Mr. Hillis continued with a presentation on the Conveyance Agreement between the US Navy and the Authority, including discussion of key endorsements to date, the transaction structure for the conveyance agreement including revenue distribution, Navy participation, schedule for revenue distribution and fiscal impacts analysis of the project. Presented outlook for revenue and expenditure impacts at expected buildout date of 2030.

There was no Public Comment on this item.

8. **Resolution Approving and Adopting Rules Governing Participation by Property Owners and the Extension of Reasonable Preferences to Business Occupants**
9. **Resolution Conditionally Adopting California Department of Housing and Community Development Title 25 Relocation Assistance and Real Property Acquisition Guidelines, With Certain Modifications**

*Items 8 and 9 were called together.*

Mr. Jon Yolles, Office of Economic and Workforce Development, presented both the Rules Governing Participation by Property Owners and the Extension of Reasonable Preferences to Business Occupants, and California Department of Housing and Community Development Title 25 Relocation Assistance and Real Property Acquisition Guidelines for approval by the Authority Board. Discussed the main elements of the Owner Participation Rules, including its compliance with California Community Redevelopment Law and their application to future business owners and private land owners. Because all current businesses on-Island are on month-to-month leases, these preferences do not apply to current on-Island commercial businesses. This preference would apply in the period after the Disposition Development Agreement where non-interim businesses would be required to relocate to accommodate redevelopment activities. These Rules also apply to private landowners, of which there are none currently within the Project Area.

Mr. Yolles continued with a presentation of the Relocation Rules and Regulations, this document is separate and apart from the Transition Housing Rules and Regulations. This document is required by California Redevelopment Law and the California Government Code. This document addresses any theoretical residents who were living on-Island prior to the Authority initially entering into the Master Leases with the United States Navy, of which there are none. The Authority Board is required to adopt these Relocation Rules and Regulations regardless, and do not negate any benefits that may be conveyed to eligible households under the Transition

Housing Rules and Regulations. Stated that the Citizen Advisory Board unanimously recommended the Authority Board adopt these two documents.

There was no Public Comment on Item 8.

Director Richardson motioned for approval of Item 8.

Director Cheng seconded the motion.

Item 8 was approved unanimously.

There was no Public Comment on Item 9.

Director Richardson motioned for approval of Item 9.

Director Samaha seconded the motion.

Item 9 was approved unanimously.

**10. Discussion of Future Agenda Items by Directors**

Director Cheng requested an update from staff on work with the Department of the Environment on the Sustainability Plan.

**11. Possible Closed Session for Conference with Real Property Negotiators**

Director Cheng stated there would not be a Closed Session held.

**12. Meeting was adjourned at 3:35PM.**











